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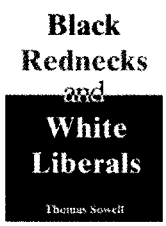

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When the Supreme Court Stopped Economic Fascism in America

BY RICHARD M. EBELING

Seventy years ago, on May 27, 1935, the U.S. Supreme Court said no to economic fascism in America. The trend toward bigger and ever-more-intrusive government, unfortunately, was not stopped, but the case nonetheless was a significant event that at that time prevented the institutionalizing of a Mussolini-type corporativist system in America.

In a unanimous decision the nine members of the Supreme Court said there were constitutional limits beyond which the federal government could not go in claiming the right to regulate the economic affairs of the citizenry. It was a glorious day in American judicial history, and is worth remembering.

When Franklin Roosevelt ran for president in the autumn of 1932 he did so on a Democratic Party platform that many a classical liberal might have gladly supported and even voted for. The platform said that the federal government was far too big, taxed and spent far too much, and intruded in the affairs of the states to too great an extent. It said government spending had to be cut, taxes reduced, and the federal budget balanced. It called for free trade and a solid gold-backed currency.

But as soon as Roosevelt took office in March 1933 he instituted a series of programs and policies that turned all those promises upside down. In the first four years of FDR's New Deal, taxes were increased, government spending reached heights never seen before in U.S. history, and the federal budget bled red with deficits. The bureaucracy ballooned; public-works projects increasingly dotted the land; and the heavy hand of government was all over industry and agriculture. The United States was taken off the gold standard, with the American people compelled to turn in their gold coin and bullion to the government for paper money under the threat of confiscation and imprisonment.

In June 1933 Congress passed the National Industrial Recovery Act (NIRA), after which FDR created the National Recovery Administration (NRA). Modeled on Mussolini's fascist economic system, it forced virtually all American industry, manufacturing, and retail business into cartels possessing the power to set prices and wages, and to dictate the levels of production. Within a few months over 200 separate pricing and production codes were imposed on the various branches of American business.

> It should be remembered that men of courage, integrity, and principle can stand up to Big Brother and resist the headlong march into economic tyranny.

The symbol of the NRA was a Blue Eagle that had lightning bolts in one claw and an industrial gear in the other. Every business in the country was asked to have a Blue Eagle sign in its window that declared, "We Do Our Part," meaning it followed the pricing and production codes. Citizen committees were formed to spy on local merchants and report if they dared to sell at lower prices.

Propaganda rallies in support of the NRA were held across the country. During halftime at football games cheerleaders would form the shape of the Blue Eagle. Government-sponsored parades featured Hollywood stars supporting the NRA. At one of these parades the famous singer Al Jolson was filmed being asked what he thought of the NRA; he replied, "NRA? NRA? Why it's better than my wedding night!" Film shorts produced by Hollywood in support of the NRA were shown in theaters around the country; in one of them child star Shirley Temple danced and sang the praises of big-government regulation of the American economy.

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The NRA codes were soon joined by similar controls over farming with the passage of the Agricultural Adjustment Act (AAA). Farmers were given subsidies and government-guaranteed price supports, with Washington determining what crops could be grown and what livestock could be raised. Government ordered some crops to be plowed under and some livestock slaughtered, all in the name of centrally planned farm production and pricing.

Much of the urban youth of America were rounded up and sent off to national forests for regimentation and mock military-style drilling as part of the Civilian Conservation Corps (CCC). The Works Progress Administration (WPA) created make-work projects for thousands of able-bodied men, all at taxpayers' expense. Since unemployed artists were "workers" too, they were set to work in government buildings across the land. Even today, in some of the post offices dating from the 1930s, one can see murals depicting happy factory workers and farm hands in a style similar to those produced in Stalin's Russia and Hitler's Germany.

Blue Eagle/NRA

This headlong march into economic fascism was brought to a halt by the Supreme Court. The catalyst was a legal case known as the *Schechter Poultry Corp. v. United States*. Schechter, a slaughterhouse that sold chickens to kosher markets in New York City, was accused of violating the "fair competition" codes under the NRA. The case made its way up to the Supreme Court, with the nine justices laying down their unanimous decision on May 27, 1935.

Three hundred people packed the court that day to hear the decision, with prominent members of Congress and the executive branch in the audience. The justices declared that the federal government had exceeded its authority under the interstate-commerce clause of the Constitution, since the defendant purchased and sold all the chickens it marketed within the boundaries of the State of New York. Therefore, the federal government lacked the power to regulate the company's production and prices. In addition, the justices stated that the NRA's power to impose codes constituted arbitrary and discretionary control inconsistent with the limited and enumerated powers delegated by the Constitution.

AAA Rejected

This was soon followed by the Supreme Court's rejection of the AAA in January 1936, when the justices insisted that the federal government lacked the authority to tax food processors to pay for the farmers' subsidies and price supports. Furthermore, since farming was generally a local and state activity, the federal government did not have the power to regulate it under the interstate-commerce clause.

Franklin Roosevelt was furious that what he called those "nine old men" should attempt to keep America in the "horse and buggy era" when this great nation needed a more powerful central government to manage economic affairs in the "modern age." FDR's response was his famous "court packing" scheme, in which he asked Congress to give him the power to add more justices to the Supreme Court in order to tilt the balance in favor of the "enlightened" and "progressive" policies of the New Deal. But this blatant power grab by the executive branch ended up being too much even for many of the Democrats in Congress, and Roosevelt failed in this attempt to assert naked presidential authority over another branch of the federal government.

Shortly after the Supreme Court declared both the NRA and AAA unconstitutional, David Lawrence, founder and long-time editor of *U.S. News and World Report*, published a book titled *Nine Honest Men* (1936). He praised the justices for their devotion to the bedrock principles of the Constitution, and their defense of the traditional American ideals of individual liberty, private property, and the rule of law—even in the face of the emotional appeal of government to "do something" during an economic crisis.

Since that landmark decision 70 years ago against the imposition of economic fascism in America, the U.S. government has continued to grow in power over the American citizenry. But it should be remembered that men of courage, integrity, and principle can stand up to Big Brother and resist the headlong march into economic tyranny.

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Perspective

Hurricane Katrina: Government versus the Private Sector

If the "American government would have responded like Wal-Mart has responded, we wouldn't be in this crisis." Louisiana's Jefferson Parish President Aaron Broussard, paraphrasing Sheriff Harry Lee during an interview on "Meet the Press," got to the root of all that went wrong in the buildup to and aftermath of Hurricane Katrina last August. "It's not just Katrina that caused all these deaths in New Orleans here. Bureaucracy has committed murder here in the greater New Orleans area."

The contrast between government agencies and Wal-Mart was underscored by the *conflict* between them. According to Broussard, before the hurricane made landfall, "We had Wal-Mart deliver three trucks of water, trailer trucks of water. FEMA [the Federal Emergency Management Agency] turned them back. They said we didn't need them."

The contrast was further illustrated by the *Washington Post* on September 6: "Over the next few days [beginning two days after the hurricane hit], Wal-Mart's response to Katrina—an unrivaled $20 million in cash donations, 1,500 truckloads of free merchandise, food for 100,000 meals and the promise of a job for every one of its displaced workers—has turned the chain into an unexpected lifeline for much of the Southeast. . . . While state and federal officials have come under harsh criticism for their handling of the storm's aftermath, Wal-Mart is being held up as a model for logistical efficiency and nimble disaster planning, which have allowed it to quickly deliver staples such as water, fuel and toilet paper to thousands of evacuees."

The *Post* quoted the executive vice president of the Brookhaven-Lincoln County [Mississippi] Chamber of Commerce: "They were ready before FEMA was."

No mystery here. Wal-Mart's bread and butter is getting goods where they are needed when they are needed—or sooner.

More from the *Post*: "Four weeks ago, *as the hurricane season approached*, Wal-Mart's *emergency-preparedness division* ordered 10,000 of the bright-blue items [the Aqua-

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Tainer, seven-gallon plastic water or gasoline jug] from Reliance Products LP, a small Canadian manufacturer, to create a stockpile for its 3,500 U.S. stores. As Hurricane Katrina took shape—and *a full week before it touched ground*—Wal-Mart ordered 40,000 more, giving Reliance time to ramp up. [Emphasis added.]

"After the storm and subsequent fuel shortage, stores across the nation sold out of gas cans. Not Wal-Mart. It's selling Aqua-Tainers like hotcakes for $7.82 apiece. Over the past week, from Memphis to Mobile, Ala., people could be seen filling the big canisters with gasoline."

Home Depot also kept serving customers. In storm-damaged Brookhaven, Mississippi, Home Depot manager Greg Newman faced 600 customers looking of generators. The *Post* reported: "He hit the phones to reel in truckloads of the precious machines. The store itself came to life on generator power, and soon the cash registers were ringing. By evening, Newman's customers had their lights and refrigerators working. 'Nobody went home without a generator that night,' he said."

No one can say with certainty what would have happened had Katrina struck a region whose infrastructure, flood-control apparatus, and emergency-services establishment had not been a virtual government monopoly for as long as anyone can remember. Nor can we know how much lower the death toll and hardship would have been had government at all levels not helped to perpetuate poverty through rotten schools, stultifying economic regulation, and more. (People with means got out.) What we do know is that people in the government's care were stranded for days without food or water. And we know that one important thing was lacking in the political-patronage sector as Katrina made her way through the Gulf of Mexico and into the Mississippi Delta: entrepreneurship. And it has been lacking for at least a century, when the local government and then the Army Corps of Engineers took charge of flood control there.

Most people who write about these issues believe that flood control and flood insurance cannot be provided in a self-regulating free market. Government has to be involved. But how impressed should we be that economists can't figure out how entrepreneurs could turn a profit producing badly needed services? They once thought private lighthouses were impossible.

Maybe if flood services hadn't been socialized, New Orleans wouldn't have become the great city it became. Who can say? What we can say is that shielding people from the full costs of their decisions usually comes to grief. The marketplace is a "discovery procedure" (in Hayek's words), and the discoveries that would have been made in a free market never were made. Instead, people were told to trust the government. We see where that got them.

* * *

Wal-Mart's critics are unrelenting in portraying the company as a detriment to our society. But as John Semmens shows, the evidence to the contrary is overwhelming.

Major newspapers insist on pretending to report that income mobility has vanished from America, but their own articles show this is not so. David Henderson discusses this puzzling phenomenon.

Is authentic liberalism in favor of or opposed to equality? It depends. Roderick Long explains.

The Bill of Rights forbade unreasonable searches and seizures because the country's founders knew what it was like not to have that protection. So why is the Fourth Amendment becoming a dead letter? Becky Akers takes up the question.

The latest call for government action is to combat the epidemic of obesity and the death it leaves in its wake. One problem, though. The numbers are phony. Radley Balko has the details.

Communism promised the ultimate safety net, but what did it deliver? The answer, as Jim Peron found, is in the distraught faces of the elderly in the former Soviet bloc.

Our winning lineup of columnists scores big again: Richard Ebeling remembers men of principle. Lawrence Reed recounts how past presidents responded to poverty. Robert Higgs revisits Machiavelli's economic policy. Thomas Szasz looks for the justice in taxing the rich to pay for psychiatric treatment. Charles Baird reports on developments in Australian labor law. And Patrick Michaels, hit one too many times with the claim that global warming is a threat, demurs, "It Just Ain't So!"

Books reviewed in this issue examine black rednecks and white liberals, the hijacking of the judicial system, globalization, and libertarian complacency about psychiatric slavery.

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Global Warming Is a Threat? It Just Ain't So!

BY PATRICK J. MICHAELS

Last December Naomi Oreskes, an associate professor of history at UCLA, published a *Washington Post* Outlook piece called "Undeniable Global Warming." She asserted that the planet is warming (true), that increases in greenhouse gases have something to do with it (true), that several scientific societies hold this view (true), that the remainder of the discussion is quibbling about the details, and that we must "respond to the threats that global warming presents."

The last two are more than debatable, the middle one is predictable, and the first two are hardly relevant to any policy.

To bolster her argument, Oreskes searched the Institute for Scientific Information database since 1993 using the keywords "global climate change." She claims that, based on the 928 abstracts returned, 75 percent "either explicitly or implicitly accepted the consensus view" (which she simply defined as stating that the planet is warming and that greenhouse gases are a significant cause).

Note that she only read the abstracts. Had she delved deeper (as Michael Crichton discovered when he researched global warming) she would have found that the *only* internally consistent picture is one of a very modest warming that would be hard put to present "threats" that we must "respond to."

Start at the top. The surface temperature of the earth averages about 0.75 degrees Celsius warmer than it was a century ago. There were two eras of twentieth-century warming, with a slight cooling in between. The first had virtually nothing to do with human activity because incremental increases in atmospheric greenhouse gases, such as carbon dioxide, were exceedingly small. Instead, the sun got hotter. According to thermometric records used by the United Nations Intergovernmental Panel on Climate Change (IPCC), the surface warmed about 0.4°C between 1900 and 1940. For unknown reasons the surface then cooled about 0.2° from 1940 through the early 1970s, and has warmed about 0.5° since then.

There is clearly a human component to the latter warming, because it is accentuated in cold, dry regions in the Northern Hemisphere, as is projected by greenhouse-effect theory.

In the Northern Hemisphere, where we have decent temperature histories, central Asia (Siberia) and northern North America should be prime places to find greenhouse warming. Of course, it's best to look in the driest season, which is obviously winter, and indeed these are the areas that show the greatest warming.

All well and good. But what does it mean? Here's where Oreskes makes illogical jumps and shows surprisingly little critical insight for a historian.

Do these verities inform the argument that we "must respond to the threats that global warming presents"? First, define the threat. To do that, you have to make some reliable estimate for future warming, and there is where Oreskes's argument is hoist by its own petard.

According to James Mahoney, National Oceanic and Atmospheric Administration deputy secretary, taxpayers have already disbursed $20 billion on the climate-science research community. Much of this expense has been in the development of models of climate behavior under conditions of increasing greenhouse effect. There are now dozens of these models.

One of the papers that Oreskes must have come across is a landmark meta-analysis of climate models by Gerry Meehl, published in 2000 in the *Bulletin of the*

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American Meteorological Society. This highly cited reference remains the gold standard of model analysis and is titled "The Coupled Model Intercomparison Project," or CMIP. According to the CMIP, individually and in toto these models indicate one central tendency: *Soon after warming begins it takes place at a constant rate.*

The models use the same increase in atmospheric carbon dioxide: 1 percent per year, compounded annually. But this number is dead wrong and has been known to be wrong for years. According to NASA's climate modeler James Hansen (who started much of the ballyhoo about global warming back in 1988), increases in the last three decades are barely a percentage at all, about 0.4 percent per year. There are other "greenhouse" emissions, such as methane, that have also increased, but they only add a small increment. The total increase is an effective change in carbon dioxide around 0.6 percent per year.

Another wonderful aspect of our climate models that Oreskes does not appreciate is that their warming is also very linear with carbon dioxide. In other words, doubling the rate of carbon-dioxide increase doubles the warming rate. So we have to chop the mean tendency given in the CMIP results (approximately 2.5°C per century) down 40 percent (to account for the fact that the real increases are running around 0.6 percent instead of 1 percent, and have been for decades). That gives a 100-year warming closer to 1.5°C.

But why go through all this rigmarole? Just test the hypothesis that the warming of the last several decades is indeed linear, and Ma Nature has declared her hand on future warming, *unless all that climate-modeling science cited by Oreskes can't even get the functional form—a straight line—of the warming right.*

The CMIP also shows the observed surface temperatures since 1970 (when the planet began the second warming phase of the twentieth century); the record is from the IPCC. The warming couldn't be more linear! Any attempt to explain the warming trend as an upwards curve (an exponential warming) or a flattening curve fails to add any statistical significance.

This is the way science works: not by counting citations using crude search engines and declaring a truth, but by testing clearly defined hypotheses, in this case, linear warming.

Flimsy Straw Person

Indeed, Oreskes has set up a profoundly flimsy straw person (straw men being politically incorrect). What does it matter if the planet warms? What is much more important is how and how much, meaning its distribution through the seasons and its rate. And when one appreciates that the rate is small and the seasonality is disproportionately in the cold time of the year, the impact is lessened even further.

To emphasize the seriousness of global warming, Oreskes then cites the "Arctic Climate Impact Assessment," a scary document, largely produced by political activists, projecting an Arctic warming with a range of several degrees in the next century, from 3 to 7°C.

The same process repeats itself in the Arctic that shows up in global and hemispheric temperatures: the warmings projected by all the models in the report are all constant-rate changes. Ironically, this is despite the fact that the text goes to great lengths to say that change in the Arctic may be nonlinear because of sudden changes if snow disappears (it won't). So, as in the case of the linearity argument on global temperatures, you have to throw out all the science and posit something that is not occurring, or you have to accept the linearity. And, as with the global situation, the warming of the Arctic in recent decades is remarkably constant.

So again the rate was known. And are readers surprised that it was at the absolute low end of the projected range, at 1.6°C per half-century? According to the IPCC, this is merely twice the rate that the Arctic warmed in the early twentieth century, long before human greenhouse emissions could have caused it.

The basis for Oreskes's *Post* article was an opinion piece she wrote in *Science*. Many of the paragraphs are direct lifts. But there is a less-than-subtle change at the end.

To the scientific audience she wrote, "The question of what to do about climate change is also still open." But for the newspaper readers she concludes, "The chattering of skeptics is distracting us from the real issue: how best to respond to the threats that global warming presents."

The first statement was accurate, and the second, as we have shown, had absolutely no basis in her article.

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Wal-Mart Is Good for the Economy

BY JOHN SEMMENS

To some, Wal-Mart is a "corporate criminal."[1] Loni Hancock, a California legislator, asserts that Wal-Mart's fortune "has been built on human misery."[2] A variety of critics have accused the company of engaging in questionable and exploitive practices on its way to becoming the largest business in the world.[3] (Its $250 billion in annual sales means that Wal-Mart has more revenues than legendary giants like Exxon, General Motors, and IBM.)

To get this big, Wal-Mart allegedly exploits its own employees by paying "poverty wages" and forcing them to work unpaid overtime. It also allegedly "squeezes" vendors, forcing them to lay off American workers and ship their jobs to foreign "sweatshops." On top of this supposed economic rapacity is the charge that Wal-Mart disregards the concerns of small communities.[4] While such charges fuel the passions of competitors who are losing customers to Wal-Mart, unions that have been unsuccessful in organizing the company's employees, and ideologues who despise the free market, they are without merit.

The nature of competition is to produce winners and losers. Those who lose can be expected to bemoan their fate. The remedy is to improve one's own competitive offering. The strategy and tactics of the leading competitor can be observed, analyzed, and, if warranted, imitated. Countermeasures can be devised. Since competition in the free market is continuous, today's losers can be tomorrow's winners. Instead of fomenting political opposition to Wal-Mart, its rivals should be improving their own game.

Unions in America have been granted ample privileges in their quest to enlist members. Under regulations established by the National Labor Relations Board, they can convert businesses to "union shops." A union shop means the union speaks and bargains on behalf of all workers—even those who don't belong. Non-members may even be compelled to pay fees to the union for unwanted bargaining "services." The rules governing elections to determine whether a union will be instituted are slanted in favor of the union's case. If Wal-Mart employees decline to form unions they are certainly within their rights to do so.

Ideologues who rant against Wal-Mart do not understand economics. In a market economy, success goes to those businesses that best and most efficiently serve consumer needs.

Ideologues who rant against Wal-Mart do not understand economics. In a market economy, success goes to those businesses that best and most efficiently serve consumer needs. Businesses must induce customers to hand over money in exchange for the merchandise. Customers are completely free to ignore the offerings of any business. Every business, Wal-Mart included, must win its customers' patronage anew each day.

We all know that consumers like bargains. Getting something for less money is considered savvy shopping. Wal-Mart has opted to ensure that its prices are as low

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as can be. This focus has enabled the company to promise "always low prices, *always*."

Low prices benefit both the consumers and the overall economy, besides being a winning strategy for Wal-Mart. Every dollar a consumer saves on a purchase enables him or her to buy other items. More of consumers' needs and wants can be fulfilled when prices are lower than when prices are higher. Because a consumer's dollars go further at lower prices, more merchandise can be manufactured and sold. All the businesses making and selling these other products and services are helped.

The sheer size of Wal-Mart attests to the success of its strategy and the benefits to the economy. Growing into the largest business on the planet indicates that it is accurately interpreting consumer needs and efficiently serving them. This is exactly what we want businesses to do. This is what the free market encourages them to do. It is estimated that Wal-Mart's impact on prices accounted for 12 percent of the economy's productivity gains in the 1990s.[5] This also helped reduce the effect of the Federal Reserve's inflation of the money supply.

> From an economic perspective, when all the claims are dispassionately evaluated it looks like Wal-Mart promotes prosperity.

But what about the methods Wal-Mart uses to achieve its goal of low prices? What about its exploitation of labor? The free market requires that transactions be carried out voluntarily between the parties. No one is forced to work for Wal-Mart. The wages it pays must be adequate to secure the services of its employees. Would Wal-Mart's employees like to be paid more? Sure, everyone wants higher pay. If its employees could get higher pay elsewhere, Wal-Mart would lose its best workers to the businesses paying those higher wages.

The same goes for the alleged uncompensated overtime. Wal-Mart can't force its employees to work overtime without compensation. Employees are not chained to their stations. They are free to leave and take other jobs if the pay or working conditions at Wal-Mart are less than satisfactory.

Neither can Wal-Mart "squeeze" vendors, compelling them to accept deals that they would prefer to refuse. Of course, sellers would like to get as high a price for their wares as they can. Likewise, buyers would like to get as low a price as they can. Both have to settle on a price that is mutually agreeable. Wal-Mart has a reputation for keeping its word and paying promptly.[6] This enables its suppliers to plan their production and provides a reliable cash flow to help fund operations.

If some of Wal-Mart's suppliers choose to manufacture their products overseas, that is because doing so lowers their costs. Sure, the costs may be lower because the wages demanded by foreign workers in places like Bangladesh are low and the workplaces may be "sweatshops" compared to conditions in U.S. factories. But this is hardly the cruel exploitation that Wal-Mart's critics describe. The relevant comparison is not to the working conditions Americans have become accustomed to after two centuries of industrial progress and wealth beyond the wildest dreams of inhabitants of the less-developed countries. The relevant comparison is to the alternatives available in these less-developed economies.

Companies that employ people in factories in less-developed economies must offer a compensation package sufficient to lure them from alternative occupations. So as bad as these "sweatshop" wages and working conditions may appear to Americans who have a fabulous array of lucrative employment opportunities, they are obviously superior to the alternatives that inhabitants of less-developed economies are offered. If the "sweatshop" jobs weren't superior, people wouldn't take them.

Wal-Mart and Small Communities

The claim that Wal-Mart "disregards the concerns of small communities" is also contradicted by the evidence. If Wal-Mart's stores were not in tune with the concerns of shoppers in small communities, the stores wouldn't make a profit and would eventually shut down. If Wal-Mart's stores were not in tune with the concerns of job seekers in those communities, the stores wouldn't be able to staff their operations. The concerns that Wal-Mart rightly disregards are those of local businesses that

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would prefer not to have to deal with new competition. The absence of rigorous competition leads to high prices in many small communities. While this may be good for the profit margins of established businesses, it is not necessarily a condition to be preferred over the benefits for the majority of the inhabitants of the community that result from robust competition.

Wal-Mart runs the largest corporate cash-giving foundation in America. In 2004 Wal-Mart donated over $170 million. More than 90 percent of these donations went to charities in the communities served by Wal-Mart stores.[7]

From an economic perspective, when all the claims are dispassionately evaluated it looks like Wal-Mart promotes prosperity. The company is helping consumers get more for their money. It is providing jobs for willing employees. It is stimulating its suppliers to achieve greater economies in manufacturing. It is encouraging trade with less-developed economies, helping the inhabitants of Third World nations to improve their standards of living. Far from "disregarding the concerns of small communities," Wal-Mart offers an appealing place to shop and work.

Wal-Mart is doing all these good things and making a profit of around $9 billion a year. This is a profit margin of less than 4 percent. That's mighty efficient. To call Wal-Mart a "corporate criminal" is slander. Wal-Mart is a model of how successful capitalism is supposed to work. It is a company that should be emulated, not reviled.

1. Liza Featherstone, "Down and Out in Discount America," *The Nation*, January 3, 2005, p. 14.
2. Charles Burress, "Wal-Mart Foes Detail Costs to Community," *San Francisco Chronicle*, February 17, 2004, www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/02/17/BAGLL5224G1.DTL.
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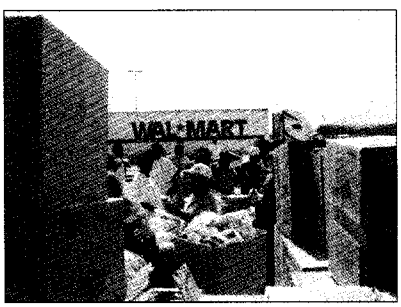

How Wal-Mart Responded to Katrina

Hurricane Katrina damaged 89 Wal-Mart facilities in the south; nine sustained major damage. Ten days after the storm 15 stores and clubs remained closed. Initially, more than 34,000 Wal-Mart employees were displaced.

Wal-Mart moved quickly to contact employees to make sure they were safe and implemented a policy that allowed any displaced associate to "report for work at any U.S. Wal-Mart store." Employees whose homes were flooded or destroyed are eligible for up to $1,000 from a special disaster-relief fund. By early September nearly $4 million had been distributed to more than 6,000 employees.

Wal-Mart dispatched more than 2,500 trailer-loads of water and emergency supplies to its facilities in the affected areas. Diapers, toothbrushes, and other personal products were given to assist evacuees arriving in large numbers at numerous Red Cross shelters. Wal-Mart also helped evacuees with emergency prescription needs, allowed for two weeks of free check-cashing in stores in the disaster area, created an "emergency contact" service in stores and online, accepted vouchers from various relief agencies, and set up a gift-registry that allowed customers to purchase specific items for victims.

By the end of the first week in September, Wal-Mart had donated the use of several vacant facilities to relief agencies and $17 million in cash to emergency relief efforts, and collected an additional $4 million in contributions from customers throughout the United States. Wal-Mart also donated computers to Red Cross shelters, beds to the Houston Astrodome, and two trailers of water and basic goods to the New Orleans police department. In hard-hit areas of Mississippi, the company sent truckloads of water, ice, and food for distribution to residents.

—Beth Hoffman

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Income Mobility: Alive and Well

BY DAVID R. HENDERSON

"As Rich-Poor Gap Widens in the U.S., Class Mobility Stalls," blares the headline on page one of the May 13 *Wall Street Journal*. When you see such a headline, wouldn't you think it means that the income mobility of Americans is no longer as great as it was? That's what we tend to think when we see the verb "stalls." Some of us probably picture a car traveling along the road at a good clip and then slowing down. If it were really true that the ability of Americans to move from one income group to another has fallen in recent years, that would be some cause for alarm. It would certainly justify a front-page article in the *Wall Street Journal*.

But it's not true. Moreover, and here's the amazing thing, the *Journal*'s very own article doesn't claim that income mobility is falling.

You read that right. An article with a dramatic headline about income mobility having "stalled" doesn't claim that income mobility has, in fact, fallen. In the third paragraph, when the article's author, David Wessel, finally gets to the important facts, he writes:

> As the gap between rich and poor has widened since 1970, the odds that a child born in poverty will climb to wealth—or a rich child will fall into the middle class—remain stuck. Despite the spread of affirmative action, the expansion of community colleges and the other social change designed to give people of all classes a shot at success, Americans are no more or less likely to rise above, or fall below their parents' economic class than they were 35 years ago.

In other words, income mobility, according to the article, has not changed over the last 35 years. So it turns out that the *Journal* uses the word "stall" to mean "remain constant." Just imagine what the headlines would look like if the newspaper's editors had the same news sense when writing about other things that didn't happen or that continued on normally. Here are a few examples:

> "California goes another month without earthquake"
> "War between France and U.K. nowhere on the horizon"
> "Women continue to get pregnant"

One has the impression that David Wessel got a few pieces of data showing that income mobility has fallen, hopped on the issue to write a path-breaking article, did enough research to find that there was no story, and then wanted not to have wasted a few weeks of research and so wrote the story anyway. That's the charitable interpretation. The other interpretation is that he wanted, in the worst way, to undercut the belief in income mobility that helps make this a great country and that he used all the sneaky language tools at his command to make his case.

Wessel is not alone. On May 15, just two days later, the *New York Times* carried an article similar in tone: "Class in America: Shadowy Lines that Still Divide." A careful reading of the article leads one to the conclusion that, if its data are correct, income mobility is alive and well. According to the *Times*, "mobility seems to have stagnated." Note the use of the word "stagnated." It means the same thing as "stalled." When the article's authors, Janny Scott and David Leonhardt, get to the

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facts, they admit as much, writing: "Some economists consider the findings of the new studies murky; it cannot be definitively shown that mobility has fallen during the last generation, they say, only that it has not risen. The data will probably not be conclusive for years."

Yet throughout their piece, the reporters add lines that undercut the message that income mobility is unchanged. They write, for example, "Conservatives tend to assert that mobility remains quite high, even if it has tailed off a little." Yet they cite no evidence that mobility has tailed off. Elsewhere they quote Amherst College president Anthony W. Marx as saying, "If economic mobility continues to shut down, not only will we be losing the talent and leadership we need, but we will face a risk of a society of alienation and unhappiness." But Marx's statement assumes that economic mobility has shut down. A good reporter would either not have bothered using this statement because it so contradicted the truth, or would have offset it with a quote or a comment pointing out the statement's falsity. Scott and Leonhardt did neither.

Moreover, the tone of the *Times* piece is that there's a problem here. Even while pointing out how many of life's luxuries are available to the mass of Americans now compared to 50 years ago, the authors are determined to find a pile of manure in with the pony. So, for example, in discussing who gets the best school districts, the "right preschool program," or the best medical specialists, they refer to "the quiet contest among social groups that the affluent and educated are winning in a rout."

The word "quiet" has become one of the most pernicious words in modern American journalism. Reporters regularly talk about quiet conversations between people or quiet attempts of various special interests to influence politicians. How do the reporters know that various conversations that they weren't party to were quiet? They don't. I'm guessing that most of the conversations alleged to be quiet were actually carried on at normal volume. But by using the term "quiet," modern American journalists manage to connote something sinister about the enterprise. Similarly here, the *Times* reporters seem to want to communicate that competition for good schools and good doctors is sinister.

More important than the motives of reporters at the *Wall Street Journal* and the *New York Times*, though, are the facts about income mobility. And the facts, both those the reporters cited and those they didn't, show that income mobility is doing fine in the United States.

Consider data that Wessel cites from a study of wages for American men born between 1963 and 1968. The study, by Bhashkar Mazunder, an economist at the Federal Reserve Bank of Chicago, shows that for men whose fathers were in the bottom 25 percent of earners, 32 percent were in the top half. For men whose fathers were in the top 25 percent, 34 percent were in the bottom half. Mazunder also found that 14 percent of men whose fathers were in the bottom 10 percent of the wage scale made it to the top 30 percent, and 17 percent of men whose fathers were in the top 10 percent dropped down to the bottom 30 percent. Wessel made sure to put the word "only" in front of these percentages, presumably to persuade the reader that this is not much mobility, but it seems like pretty high mobility to me.

Work Counts

Also interesting is what factors cause some people to be at the top of the statistical distribution of income. Not surprisingly, work is one such factor. The *Times* piece quotes a study which found that in 1973 the highest-paid tenth of the country worked fewer hours than the bottom tenth. Today, according to that study, the highest-paid tenth works more hours. Imagine that: working more hours and getting more income that way. Who'd have thunk it?

Although the *Times* doesn't cite the specific study that reached this conclusion about work hours, the one they have in mind is probably that of MIT economist Dora Costa. She found that in 1991 workers whose total earnings put them in the bottom tenth of the wage distribution worked an average of 7.5 hours a day, compared to 8.5 hours for workers whose earnings put them in the top tenth. What's the point? Simply this. It's usually not difficult to sign up for jobs in which you can work more hours, and so part of the low income of low-income workers is due to the fact that many of them choose to work fewer hours. So even if there were decreased mobility from one income group to another, some of this would reflect choices on the part of low-income workers not to work harder. Such choices are

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PERCENT OF HOUSEHOLDS WITH:	Poor Households 1984	Poor Households 1994	All Households 1971
Washing machine	58.2	71.7	71.3
Clothes dryer	35.6	50.2	44.5
Dishwasher	13.6	19.6	18.8
Refrigerator	95.8	97.9	83.3
Freezer	29.2	28.6	32.2
Stove	95.2	97.7	87.0
Microwave	12.5	60.0	<1.0
Color television	70.3	92.5	43.3
VCR	3.4	59.7	zero
Personal computer	2.9	7.4	zero
Telephone	71.0	76.7	93.0
Air conditioner	42.5	49.6	31.8
One or more cars	64.1	71.8	79.5

Source: W. Michael Cox and Richard Alm, *Myths of Rich and Poor,* Basic Books, 1999, p. 15

not necessarily bad choices: more power to them if they want to enjoy their leisure. But then any slowing of movement from a lower-income group to a higher-income group would not necessarily be a sign of increased rigidity or increased difficulty of moving up.

In a *Wall Street Journal* op-ed ("For the Record," May 18, 2005), Alan Reynolds, an economist with the Cato Institute, points out a related finding about the connection between work and income that economists who study the issue have noted for at least the last quarter century: one of the main reasons some households have more income than others is that the higher-income households have, on average, more people working than the lower-income households. He notes that in 2003, median income for households with two full-time workers was $85,517, compared to only $15,661 for households in which nobody worked. Reynolds cites a 1980 study by Alan Blinder, a Princeton economist and former adviser to President Clinton. Blinder found that the highest-income fifth of families worked 30 percent of total weeks worked in the economy, whereas the lowest-income fifth worked only 7.5 percent of total weeks worked. Yet, given the average incomes of the various quintiles at the time, on an income-per-week-worked basis, the ratio of income of the highest fifth to the lowest fifth was only two to one.

But more important, life isn't a race, unless you insist on making it one. Let's say someone starts out in the lowest fifth and never makes it beyond the second-lowest fifth or out of the lowest fifth. So what? That doesn't imply slow progress. All it means is that that person is not progressing in real income as fast as many others are progressing. But the person is progressing quickly. Why? Look at what that person has compared to his or her counterparts only a decade or so earlier. In their book, *Myths of Rich and Poor*, Michael Cox, an economist with the Federal Reserve Bank of Dallas, and journalist Richard Alm compare poor households in 1994 with their counterparts in 1984 and with all households in 1971. (See the table.)

Notice that for all items except freezers, poor households had more of them in 1994 than in 1984, and often, as in the case of VCRs, clothes dryers, and color televisions, substantially more. Why did freezers decline slightly? My guess is that it's because refrigerators improved, so people didn't need a freezer as much. Notice, also, that for many items, including washing machines, clothes dryers, dishwashers, refrigerators, stoves, microwaves, color TVs, VCRs, computers, and air conditioners, the poor in 1994 were doing better than the average of all households in 1971, just one generation earlier. Now that's progress.

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You might point out that you would expect the poor to do better when you consider how much the inflation-adjusted prices of many of these items have fallen. But that's exactly my point. Economic progress occurs when people figure out how to do more with less. The fact that the real prices of many of these goods have fallen and the quality has increased means that even poor people are doing much better than they were. That's irrelevant only to those who see life as a race, the kind who believe, in the words of the bumper sticker, "He who dies with the most toys wins."

The improvement in people's standard of living, no matter which quintile they're in, is even more dramatic over longer periods. Think about some of the things we take for granted today. Consider three. When I was a teenager in the mid-sixties, one glamorous item that was pure science fiction was the phone that cartoon character Dick Tracy wore on his wrist. Now, with cell phones, we have close to that same thing—the limit is probably not technology but, rather, lack of demand. And as anyone knows who has walked an American street in the last three years, cell phones are not the exclusive preserve of the rich. A large percent of people of all income categories owns cell phones.

Maybe cell phones don't matter that much to you. But surely food must. One of the items that was almost a luxury at mid-century was eggs. In today's dollars, a dozen eggs in 1950 sold for $2.92. Nowadays, you can buy a dozen eggs for under a dollar, a greater than 66-percent drop in price. And it's not just the price of eggs; prices of food generally have fallen.

Health Care

Finally, consider health care. My father had polio in 1943. My sister had it in 1952, and in that same year, 3,145 Americans died of polio. But because of a doctor named Jonas Salk and a drug company named Parke Davis that wanted to make money, a vaccine for polio was invented and marketed in April 1955. By 1993 the number of cases of polio—not deaths, but cases—was down to three. And not just polio, but also typhoid fever, small pox, tuberculosis, and many other diseases have either disappeared or occur with far less frequency than they did even 50 years ago.

The incidence of these horrible diseases declined not because the United Nations or some other government body decreed that people had a right to be free from such horrors. Instead, the improvement in health occurred because thousands of strangers who didn't care directly about you wanted to make money off your sickness, not by making you sicker, but by making you better.

Which brings us back to income mobility. One reason people want income mobility is that they can't stand inequality in income. So, in their view, if there is to be inequality, it had better not last long. But that ignores an important function of income inequality: it gives people an incentive to serve others. If income inequality were eliminated so that everyone made the same amount of money, why would someone bother working on the Alaska pipeline in the dead of winter so that you can heat your house when it's 20-below outside? Why would doctors work long hours to make people better? Why would music composers keep coming up with new music that enhances your life? Why, in short, would people take chances, work hard, work in unpleasant situations, and persist in their visions? It's not just that you would go without Bill Gates and a few thousand people like him. You would also go without the few million people, only a handful of whom you know, who are out improving things in marginal ways that, added together, make a huge difference in your life, allowing you to live in a way that even kings 300 years ago would not have believed.

The whole focus on income inequality is mistaken. The vast majority of Americans are doing as well as they are because a few million or so are making a lot of money figuring out how to create new products and new ways to increase our productivity. Show me an economy with equal incomes and I'll show you an economy that's in the toilet. Many pundits and analysts sift through the data to find inequalities in income, which isn't hard to do. Then they sometimes suggest a new government program or tax that reduces human freedom and prosperity. Instead, they should recognize the many ways that governments hold people down—in the United States and elsewhere—and figure out how to end those oppressive measures. Then virtually all of us would be freer and wealthier. What's not to like about that?

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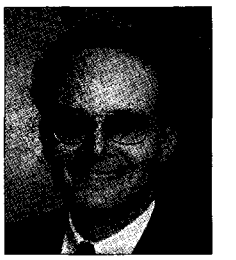

Presidents and Poverty

BY LAWRENCE W. REED

Conventional wisdom holds that fighting poverty has only lately been a concern of American presidents, and that before Franklin Roosevelt it was hardly a concern at all. This stubborn error persists.

An unrepentant welfare statist would probably survey the men who held the highest office in the land during the nineteenth century and dismiss them as heartless and uncaring. Even during the severe depressions of the 1830s and the 1890s, Presidents Martin Van Buren and Grover Cleveland never proposed that Washington extend its reach to the broad-based relief of private distress, and they opposed even the smallest suggestions in that direction.

Welfare statists make a crucial error, however, when they imply that it was left to presidents of a more enlightened twentieth century to finally care enough to help the poor. The fact is, presidents of the 1800s *did* mount a war on poverty—the most comprehensive and effective ever mounted by any central government in world history. It just didn't have a gimmicky name like "the Great Society." Those early chief executives might well have said their antipoverty program was, in a word, *liberty*. It meant self-reliance, work, and entrepreneurship; civil society; a strong and free economy; and government confined to its constitutional role as protector of that liberty.

And what a poverty program liberty proved to be! Even with a horrendous civil war and half a dozen economic downturns, America progressed from near-universal poverty at the start of the century to within reach of the world's highest per capita income by the end. Poverty didn't disappear by 1900, but what was left of it stood out like a sore thumb because it was rapidly becoming the exception.

Consider Thomas Jefferson. In his First Inaugural Address in 1801 he concisely described "a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government."

James Madison, a key figure in the construction of the Constitution, agreed. He vetoed bills for so-called "internal improvements" at federal expense, and in a speech in the House of Representatives before he became president, Madison declared, "Charity is no part of the legislative duty of the government."

Our Founders knew that a government that has no strict boundaries, that robs Peter to pay Paul, that confuses rights with wants will yield financial ruin at best and political tyranny at worst. Jefferson, Madison, and almost all of the succeeding 20 presidents of the nineteenth century were constrained by this view of the federal government, and most of them were happy to comply with it. They knew that if liberty were not preserved, poverty would be the least of our troubles.

Andrew Jackson, our seventh president, reminded Congress frequently in Jeffersonian terms what the federal role was. In his Fourth Annual Message on December 4, 1832, he wrote: "Limited to a general superintending power to maintain peace at home and abroad, and to prescribe laws on a few subjects of general interest not calculated to restrict human liberty, but to enforce human rights, this government will find its strength and its glory in the faithful discharge of these plain and simple duties."

Meanwhile, the poor of virtually every other nation on the planet *were* poor because of what governments were doing *to* them, often in the name of doing something *for* them—taxing and regulating them into

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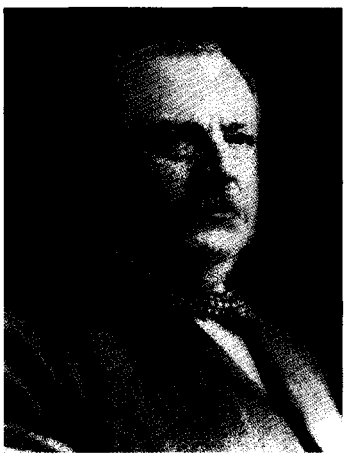
penury; seizing their property and businesses; squandering their resources on official luxury, mindless warfare, and wasteful boondoggles; foisting state monopolies on them; persecuting them for their faith; and torturing and killing them because they held views different from those of the powers that be. What America was all about was government *not* doing such things to people—and that one fact, *all by itself*, would have been a powerfully effective antipoverty program.

Americans of all colors pulled themselves out of poverty in the nineteenth century with a generous measure of wealth creation through invention and enterprise. And as they created new wealth, they generously gave much of it, along with their time and attention, to their neighbors and communities. When the French social commentator Alexis de Tocqueville visited a young, bustling America as Jackson presided in the White House in the 1830s, he cited the vibrancy of this "civil society" as one of this country's greatest assets.


Grover Cleveland

Indeed, civil society in the nineteenth century produced the most remarkable flowering of private charitable assistance ever seen. It was the era that saw the founding and flourishing of many of our most notable and lasting private associations—from the Salvation Army (established in America in 1880) to the American Red Cross (founded by Clara Barton in 1881).

Grover Cleveland

All of which leads me to a few words about a president who happens to be among my personal favorites, Grover Cleveland—our 22nd and 24th president, the only one to serve two terms that were not consecutive, the humble son of a Presbyterian minister.

In *The American Leadership Tradition: Moral Vision from Washington to Clinton*, Marvin Olasky noted that as mayor of Buffalo, New York, in the early 1880s, "Cleveland's willingness to resist demands for government handouts made his name known throughout New York State," catapulting him to the governorship in 1882 and then the presidency in 1884. In vetoing a bill in 1887 that would have appropriated a mere $10,000 in aid for drought-stricken Texas farmers, Cleveland wrote, "I can find no warrant for such an appropriation in the Constitution; and I do not believe that the power and duty of the General Government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. . . . *[T]hough the people support the Government, the Government should not support the people*" (emphasis mine).

Cleveland went on to point out that "the friendliness and charity of our fellow countrymen can always be relied on to relieve their fellow citizens in misfortune." Americans went on to prove him right. Those Texas farmers eventually received more than ten times in private aid what the bill the president vetoed would have provided.

In March an international commission on Africa called on wealthy countries like the United States to double their government "aid" to Africa. Many of the governments of Europe are in full support. As I prepared this lecture I asked myself, "What would American presidents of the nineteenth century have to say about that?" I can imagine Cleveland, Van Buren, Jackson, Madison, or Jefferson reacting in disbelief at the very suggestion. Grover might say, "Aid to Africans? We don't even do aid to *Americans*." And he would have a century of unprecedented progress against poverty to point to as his example.

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Liberty: The Other Equality

BY RODERICK T. LONG

Equality is an ideal upheld by a number of ideologies, but nowadays it is seldom associated with libertarianism or classical liberalism. Indeed, both libertarians and their critics typically think of equality as an ideal in *tension* with the ideal of liberty as libertarians understand it.

But what is meant by "equality"?

Some thinkers draw a distinction between *formal* equality and *substantive* equality, where formal equality means something like mere equality before the law—the same laws applying equally to everyone—while substantive equality requires abolishing, or at least greatly reducing, differences in wealth, opportunity, or influence.

The latter sort of equality—we might also call it socioeconomic equality—is obviously incompatible with libertarianism, at least if such equality is sought through coercive legislation.[1] Legislation aiming at socioeconomic equality is rejected by libertarians as an unwarranted and socialistic interference with the property rights of individuals.

Equality before the law, by contrast, is generally embraced by libertarians. But by itself there is nothing especially libertarian about it. Anatole France once wryly remarked that the law in its majestic equality forbids the rich as well as the poor to sleep under bridges, a line often invoked by socioeconomic egalitarians scornful of merely formal equality. But libertarians have equal reason to find such formal equality inadequate. As economist Murray Rothbard noted: "[T]he justice of *equality of treatment* depends first of all on the *justice of the treatment itself*. Suppose, for example, that Jones, with his retinue, proposes to enslave a group of people. Are we to maintain that 'justice' requires that each be enslaved *equally*? And suppose that someone has the good fortune to escape. Are we to condemn him for evading the equality of justice meted out to his fellows?"[2]

If neither substantive socioeconomic equality nor formal equality before the law captures what libertarians think matters in politics, it's tempting to conclude that equality is not a central libertarian value at all.

Yet earlier thinkers in the libertarian tradition placed far more emphasis on equality. Thomas Jefferson in the Declaration of Independence famously wrote that "all men are created equal"; in the original draft he went still further, writing that "*from that equal creation* they derive rights inherent & inalienable," thereby making equality the basis and foundation of our rights.[3] What sort of equality is Jefferson talking about?

It is generally recognized that John Locke's *Second Treatise of Government* stands foremost among those "elementary books of public right" on which Jefferson relied in writing the Declaration; and Jefferson's notion of equality is indeed derived directly from Locke's. Locke defines a "state . . . of equality" as one "wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection . . . ."[4]

In short, by the equality of men Locke and Jefferson meant not that all men are or ought to be equal in material advantages, but that all men (today it would be all persons, regardless of gender) are equal in *authority*. To

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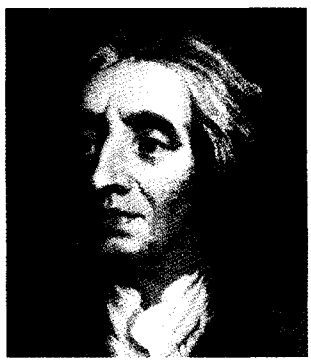
subject an unconsenting person to one's own will is to treat that person as one's subordinate—illegitimately so, if we are all naturally equal. Hence any interference with another person's liberty violates the Lockean conception of equality: "[B]eing all equal and independent, no one ought to harm another in his life, health, liberty or possessions. . . . And, being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us that may authorise us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours."[5]

No wonder, then, that Jefferson should find it natural to maintain, a century later, that human equality is the foundation of our rights against one another.


John Locke

Locke in turn was simply developing the ideas of an earlier group of English radicals with the decidedly egalitarian name *Levellers*. These Levellers, whose leaders included John Lilburne, William Walwyn, and Richard Overton, emerged during the English Civil War of the 1640s as the first mass libertarian movement. "Levellers" was not actually their preferred name for themselves; indeed, they penned tracts with titles like *A Manifestation from [Those] Commonly (Though Unjustly) Styled Levellers* and *The Levellers (Falsely So-called) Vindicated*. Their discomfort with the name stemmed from the fear that they might be interpreted as demanding the forcible abolition of inequalities in wealth, a goal they expressly repudiated: "We profess therefore that we never had it in our thoughts to level men's estates, it being the utmost of our aim that the commonwealth be reduced to such a pass that every man may with as much security as may be enjoy his propriety [i.e., his own property]."[6]

Yet the name "Leveller" suited them nonetheless, for while they did not seek socioeconomic equality, they were passionately devoted to equality in authority. Overton, for example, maintained that "by natural birth all men are equally and alike born to like propriety, liberty and freedom," so that "bellows-menders, broom-men, cobblers, tinkers, or chimney-sweepers" are "all equally freeborn" with "the greatest peers in the land." Hence, Overton inferred, "No man has power over my rights and liberties, and I over no man's," and every man is "a king, priest and prophet in his own natural circuit and compass, whereof no second may partake but by deputation, commission, and free consent from him whose natural right and freedom it is."[7]

This form of equality goes well beyond mere equality before the law. If the rulers of a state require that everyone worship Shiva, then in some sense they are treating all the citizens equally (assuming they also worship Shiva themselves); but they are nevertheless not respecting equality in authority, because they are arrogating to themselves, and denying to others, the authority to decide whether Shiva will be worshipped. Rather than merely requiring the equal *application* of the laws, equality in the libertarian sense places restrictions on the *content* of those laws as well, ruling out forcible subordination of any kind. This point of view is entirely consistent with the legitimate *defensive* use of force; such force *restores* equality in authority rather than violating it. But any *initiatory* use of force involves treating other people as though they were "made for one another's uses," and so is forbidden as an affront to human equality. Those who see only two forms that equality can take—substantive socioeconomic equality and formal equality before the law—have neglected the possibility of libertarian equality, which is *substantive but not socioeconomic*.

Libertarian Equality

What are the political implications of this third kind of equality? The upshot of libertarian equality, equality in authority, is that *government can possess no rights that its subjects lack*—unless they freely surrender such rights by "deputation, commission, and free consent." Since I have no right over anyone else's person or property, I cannot delegate to government a right over anyone else's person or property. As nineteenth-century French economist Frédéric Bastiat eloquently stated:

> If every person has the right to defend—even by force—his person, his liberty, and his property, then it

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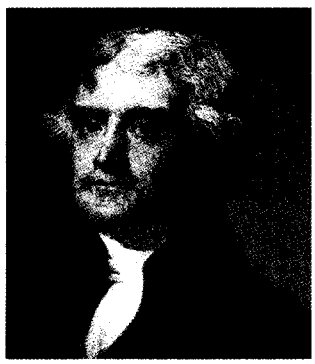
follows that a group of men have the right to organize and support a common force to protect these rights constantly. Thus the principle of collective right—its reason for existing, its lawfulness—is based on individual right. And the common force that protects this collective right cannot logically have any other purpose or any other mission than that for which it acts as a substitute. Thus, since an individual cannot lawfully use force against the person, liberty, or property of another individual, then the common force—for the same reason—cannot lawfully be used to destroy the person, liberty, or property of individuals or groups.[8]

While libertarians disagree with one another as to how much, if any, of one's natural liberty it is proper or needful to surrender to government, all libertarians agree in seeking to *minimize* the inequalities in authority existing between the average person on the one hand and the functionaries and privileged beneficiaries of the state on the other.


Thomas Jefferson

Neither socioeconomic equality nor equality before the law measures up to the radicalism of libertarian equality, because neither socioeconomic equality nor equality before the law goes so far as to call into question the existing power structure. Both forms of equality call on the rulers to ensure that equality (of the favored form) prevails *among the ruled*, while assuming all along an inequality in authority between rulers and ruled. (The fact that the ruled are eligible for elective office does not erase this inequality, since those who make it into the ranks of the rulers must necessarily be a small minority of the populace.) As philosopher Antony Flew writes, under a system of governmental regulation "what the various ruling élites determine to be fitting . . . may or may not turn out to be equality between all those who are so dependent. But as between those who give and those who receive the commands . . . there can of course be no equality at all."[9]

Libertarian equality, by contrast, involves not merely equality *before* those who administer the law, but equality *with* them. Government must be restrained within the moral bounds applicable to private citizens. If I may not take your property without your consent, neither may the state.

Hence it is libertarianism, not statist socialism, that deserves the title *radical egalitarianism*. Liberty is the truest form of equality.[10]

1. It's worth remembering that pursuing socioeconomic equality through *peaceful* and *voluntary* means is entirely compatible with libertarianism. For a fuller discussion of this point, see Roderick T. Long and Charles W. Johnson, "Libertarian Feminism: Can This Marriage Be Saved?" www.charleswjohnson.name/essays/libertarian-feminism/.

2. Murray N. Rothbard, *Man, Economy, and State: A Treatise on Economic Principles; with Power and Market: Government and the Economy*, scholars' edition (Auburn, Ala.: Ludwig von Mises Institute, 2004), p. 1219, http://mises.org/rothbard/mes/chap16d.asp.

3. Thomas Jefferson, Original Draft of the Declaration of Independence (emphasis added), http://classicliberal.tripod.com/jefferson/origdecind.html.

4. John Locke, *Second Treatise of Government* II. 4, www.lonang.com/exlibris/locke/loc-202.htm.

5. Locke, ibid., II. 6.

6. *A Manifestation from Lieutenant-Colonel John Lilburne, Mr. William Walwyn, Mr. Thomas Prince, and Mr. Richard Overton (Now Prisoners in the Tower of London), and Others, Commonly (Though Unjustly) Styled Levellers* (1649), www.constitution.org/lev/eng_lev_11.htm.

7. This passage is from what is perhaps the most delightfully titled political treatise ever written: Richard Overton, *An Arrow Against All Tyrants and Tyranny, Shot from the Prison of Newgate into the Prerogative Bowels of the Arbitrary House of Lords, and All Other Usurpers and Tyrants Whatsoever; Wherein the Original, Rise, Extent, and End of Magisterial Power, the Natural and National Rights, Freedoms and Properties of Mankind are Discovered and Undeniably Maintained; the Late Oppressions and Encroachments of the Lords over the Commons Legally (By the Fundamental Laws and Statutes of This Realm, As Also By a Memorable Extract Out of the Records of the Tower of London) Condemned; the Late Presbyterian Ordinance (Invented and Contrived by the Diviners, and By the Motion of Mr. Bacon and Mr. Tate Read in the House of Commons) Examined, Refuted, and Exploded, As Most Inhumane, Tyrannical and Barbarous, by Richard Overton, Prerogative Archer to the Arbitrary House of Lords, Their Prisoner in Newgate, for the Just and Legal Properties, Rights and Freedoms of the Commons of England* (1646), www.constitution.org/lev/eng_lev_05.htm.

For further discussion of Overton see Peter Kurrild-Klitgaard, "Self-Ownership and Consent: The Contractarian Liberalism of Richard Overton," *Journal of Libertarian Studies*, Fall 2000, pp. 43–96, www.mises.org/journals/jls/15_1/15_1_2.pdf.

8. Frédéric Bastiat, *The Law*, trans. Dean Russell (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1998 [1850]), www.econlib.org/library/Bastiat/basEss2a.html.

9. Antony Flew, *The Politics of Procrustes: Contradictions of Enforced Equality* (Buffalo, N.Y.: Prometheus Books, 1981), p. 12.

10. For a fuller discussion of libertarianism's egalitarian dimension, see Roderick T. Long, "Equality: The Unknown Ideal," Mises Daily Article, October 16, 2001, http://mises.org/story/804.

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Undoing the Fourth Amendment

BY BECKY AKERS

Carlos Gonzalez, 21, of Weston, Florida, stands spread-eagled while an officer pats him down. When the officer bends to frisk his legs, Carlos lowers his arms without asking permission. The officer snarls, "Hey, we're not even close to being finished. What are you trying to hide?" While a crowd watches, Carlos is ordered to disrobe. He hands over his shoes and belt and empties his pockets as the search continues in mortifying detail.[1]

Is Carlos a convicted criminal entering prison, or is he merely among the 10–15 percent of American citizens whom the Transportation Security Administration (TSA) hauls aside for "additional screening" at the nation's airports? Two million passengers weekly are pawed as if they were felons, though their only crime is catching a flight. And while even suspected murderers are not supposed to be searched without warrants, law-abiding passengers such as Carlos abandon this freedom when they enter an airport as surely as Dante's sinners abandon hope when they enter hell.

The Fourth Amendment is so clearly written that even TSA bureaucrats and Supreme Court justices should be able to comprehend it: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." How is it, then, that no warrant is ever produced nor any probable cause cited before passengers are manhandled and bags rummaged?

The answer leads us down a rabbit-hole of court decisions to the Wonderland of postconstitutional America. Ironically, despite its high-tech wands and X-ray machines, its sophistication and jargon, Wonderland's tactics have been copped from a long-dead British king. Nor have the evils that result from those tactics abated over the years.

> Writs of assistance professed to be search warrants, but they specified neither the person and place to be searched nor the item to be found.

Eighteenth-century British citizens, whether in England or the colonies, were almost alone among the world's peoples in boasting that their homes were their castles, inviolate even from their government. Sir William Pitt described this liberty in November 1783 while addressing the House of Commons: "The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement."

Folks lived in peace, their homes and persons sacrosanct. No officer disturbed them unless he had good cause—good enough that he was willing to swear to it—to suspect foul play. Even then, he might not search indiscriminately. He had to specify the place he wanted to search and the object he hoped to find. "Fishing" was not allowed.

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As the French and Indian War waned in the early 1760s, so did this halcyon interlude. England's treasury had been depleted by the war, and it lusted after the customs revenues being lost to smugglers. Because so many items were either prohibited outright or prohibitively taxed, smuggling flourished on both sides of the Atlantic. King George III, however, concentrated on the colonists' criminality. How dare they patronize French and Dutch merchants! The law required them to buy their sugar and furniture, clothing and molasses from the king's friends, regardless of high prices or poor service. Worse, Americans were also dodging the punitive duties on foreign goods by sneaking them past the understaffed customs office.

The first thing George did was beef up his customs department with "swarms of officers, to harass our people and eat out their substance." Then, because that would drive smugglers to increasingly ingenious ploys while the swarms wasted time obtaining warrants, the king resurrected an institution from earlier British history called "writs of assistance."

James Otis

The term alone sent shivers over any colonist who bought or sold smuggled goods—activities perhaps as common in eighteenth-century America as purchasing plane tickets is today. Writs of assistance professed to be search warrants, but they specified neither the person and place to be searched nor the item to be found. Their generality turned long-standing premises of British law upside down. Writs assumed that everybody was a criminal, that he could be searched at any time for anything. Armed with a writ, an officer could ransack any home or shop, any place at all, in an open-ended hunt for contraband. As Mercy Otis Warren put it, writs permitted officers to "enter the dwelling of the most respectable inhabitant on the smallest suspicion of a concealment of contraband goods, and to insult, search, or seize, with impunity."[2]

Writs so enraged Bostonians that they hired—or tried to hire: he refused payment—Mercy's brother, James, to rebut them before the Superior Court of Massachusetts in February 1761. Otis introduced his case by thundering: "I will to my dying day oppose, with all the powers and faculties God has given me, all such instruments of slavery on the one hand and villainy on the other as this Writ of Assistance is. It appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law-book."[3]

If the power to tax is the power to destroy, then the power to search is the power to degrade. That may explain why government cherishes this authority as much as free people despise it. Few things short of torture keep men more servile than knowing they may, at their ruler's whim, be prodded, poked, stripped, and humiliated.

However, if we grant that one of government's few legitimate pursuits is to apprehend and try thieves, murderers, and other genuine criminals, we must allow it to search for evidence of the crime. Theoretically, warrants balance the state's need to search with the citizen's right to privacy. They severely limit governmental power over the suspected individual—who, at this point has not been convicted of any crime—by specifying the particulars of what can be searched as well as the items sought. Obviously, the more items the state declares illegal, the more essential to freedom these limitations become: allowing government to search indiscriminately means it will find and punish the possessors of drugs, guns, or any of the million and one other things it bans.

Otis listed the malignancies that multiply when specific warrants are abandoned in favor of general searches, malignancies threatening us today. First were the numbers of people who could procure a writ. No longer were a few, specially deputized officers permitted to search. Rather, "Every one with this writ may be a tyrant; if this commission be legal, a tyrant in a legal manner, also, may control, imprison, or murder any one within the realm."

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Screeners with Criminal Backgrounds

Otis could have been speaking of the TSA. The agency employs about 45,000 screeners, some with criminal backgrounds.[4] It also boasts about how quickly it hired these people;[5] no wonder the screeners weren't screened. Nevertheless, they wield enormous power over the passengers who fall into their hands. One bragged to magician/comedian Penn Jillette, "Once you cross that line, I can do whatever I want."[6] Another confiscated a passenger's cigarette lighter after exclaiming that he'd always wanted one like it. The passenger reported him to a supervisor but received no satisfaction, so he threatened to contact TSA authorities. The supervisor replied, "Go ahead and complain, there is *nothing you can do to us.*"[7]

"In the next place," Otis observed, general searches are "perpetual; there is no return. A man is accountable to no person for his doings. Every man may reign secure in his petty tyranny, and spread terror and desolation around him." When an officer is not looking for a specific item in a specific place, his search never ends. For all practicable purposes, he can search the entire population, and then, if his busybody tendencies still itch, begin over again.

> If the power to tax is the power to destroy, then the power to search is the power to degrade.

The scope and universality of airport searches confirm this. One court noted in 1989 that "[i]n the 15 years the [airport searching] program has been in effect, more than 9.5 billion persons have been screened, and over 10 billion pieces of luggage have been inspected" (*Nat'l Treasury Employees Union v. Von Raab*).

"In the third place," Otis continued, "a person with this writ . . . may enter all houses, shops, etc., at will, and command all to assist him." He added, "Bare suspicion without oath is sufficient." Writs exempted the officer from swearing to an impartial third party that he had "probable cause" to believe—not merely suspect—that a person had committed a crime. This obliterated any limits on who could be searched because an officer could claim to suspect everyone. It also destroyed the balance of power, so hallowed in Anglo-American jurisprudence, between branches of government. Judges traditionally stood between citizens and the state, protecting them from overly zealous or personally vindictive officers. Having to seek judicial permission for a search meant that an officer offended at the pub one evening could not suddenly appear on a man's doorstep and demand to search his home. He must first persuade a judge to issue a warrant. Writs of assistance sacked this safeguard. The same person who had authorized the search conducted it. There was no recourse to the judiciary, no objective third party deciding whether a proposed search was necessary. Instead, personal pique and prejudice determined who was searched as well as how thoroughly.

The TSA searches all passengers and their baggage. Without any grounds, without even a specific suspicion of a specific passenger, screeners search the flying population at large. The fact that passengers are going about their business peacefully, that they have done nothing to warrant suspicion, much less a search, means nothing. Furthermore, no judge interposes between the citizen and the state. The searches are both sanctioned and conducted by the executive branch of the federal government. And because screeners enjoy enormous leeway in their jobs, they can take revenge on anyone who defies, disobeys, or displeases them.

"Fourthly," Otis wrote, "by this writ not only deputies, etc., but even their menial servants, are allowed to lord it over us." That rendered citizens "the servants of servants, the most despicable of God's creation."

Tucked away on the TSA's website are three explosive words that encourage screeners "to lord it over us." On a page titled "Civil Sanction Guidelines for Individuals" is a list of eight "Aggravating factors" that, when committed by passengers, may result in the TSA's "imposing civil penalties up to $10,000 per violation. . . ."[8] Number 8 is "Attitude of violator."

Passengers waiting in long lines to be groped had better smile, obey screeners' orders without question, and be deferential. Even so, a screener may find a passenger's "attitude" troubling, particularly if the screener is tired and hungry, or dislikes the passenger's ethnicity or choice of T-shirt, or considers himself the poor man's ven-

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geance on anyone wearing a Rolex and designer clothes.

The TSA's antics might also sour a passenger's "attitude," especially given the "factors" that can provoke a fine. These include "number of weapons" and "type of weapon" found on passengers at checkpoints.[9] That sounds reasonable, if unconstitutional: everyone knows not to bring guns or grenades to an airport. However, the TSA's definition of "weapon" is amazingly broad, so broad it encompasses emery boards and Zippo lighters. This turns many passengers into "criminals" who are liable to fines—or worse.

Add to this that at the checkpoint, mid-search, screeners can suddenly declare *anything*— barrettes, belt buckles, bracelets—a weapon. The TSA's website lists "Permitted and Prohibited Items," but it warns that "The prohibited and permitted items chart is *not intended to be all-inclusive* and is updated [that is, changed, usually without any fanfare or announcement] as necessary. To ensure everyone's security, the screener may determine that *an item not on the prohibited items chart is prohibited*. In addition, the screener may also determine that *an item on the permitted chart is dangerous* and therefore may not be brought through the security checkpoint."[10]

The wise passenger will betray no displeasure at these arbitrary decisions, even if the "weapon" stolen from him is a fountain pen inherited from his father or a diamond-topped stickpin. As he is ordered about, insulted, mauled, and prodded by screeners, as they confiscate his nail clippers or steal his money[11] or jewelry,[12] the wise passenger merely smiles and thanks them. Otherwise, he may incur a $10,000 fine.

Cigarette lighters were banned from commercial aircraft in February. But many plastic lighters can slip past the TSA's metal detectors. Nevertheless, the wise passenger who forgot to leave his lighter at home will resist the urge to keep it quietly in his pocket: "artful concealment" is No. 1 on the list of "factors." Should the wise but forgetful passenger make it through the metal detector only to be pulled aside for a random pat-down, he again risks a fine. "Our intent is just to make sure that people who are a threat are dealt with accordingly. The, 'Oh, I forgot I had it' doesn't work with us anymore," explained Lauren Stover, speaking on behalf of the TSA, when a passenger not only lost the contraband in his carry-on bag but was fined $250 for the pleasure.[13] (For his part, the passenger protested, "I don't feel as though I had intent that would really go hand in hand with a fine." But, as with so many legal niceties, "intent" no longer matters when dealing with the TSA.)

The TSA prizes its power over American passengers every bit as much as the British government prized its power over colonial consumers, so Otis was probably not surprised when the court ruled against him. What did surprise him was an ambush by some of the customs commissioners his suit had threatened. They jumped him one night and beat him so severely he was left for dead. "[T]he wounds did not prove mortal, [but] the consequences were tenfold worse than death," his sister reported. Otis's mind "was destroyed, reason was shaken from its throne, genius obscured, and the great man in ruins lived several years for his friends to weep over. . . ."[14]

End of an Era—Almost

Meanwhile, arbitrary and warrantless searches continued, until, 15 years later, they sparked a revolution. (Even modern courts admit this. General searches "more than any one single factor gave rise to American independence," Justice Felix Frankfurter noted in a dissenting opinion in *Harris v. United States*, (1947). "John Adams surely is a competent witness on the causes of the American Revolution. And he it was who said of Otis' argument against search by the police . . . 'American independence was then and there born.' ") Later, when the Bill of Rights was added to the Constitution, Americans whose homes and papers had been ransacked, who had been humiliated and insulted by the Crown's "menial servants," made sure they never would be again. The Fourth Amendment—and, as Frankfurter also noted, similar provisions in all 48 state constitutions—guaranteed Americans' freedom from general searches.

Over the next hundred years the government occasionally assailed this liberty. It began its assault in earnest, however, during the twentieth century. "Moral" crusaders against gambling, drinking, and drugs hated the Fourth for thwarting their attempts to make their neighbors as virtuous as themselves. Politicians drafted laws circumventing the Fourth, while sympathetic judges ruled in favor of the state's power to search. Their decisions mimic the childhood game of "Telephone," in which one judge mistakes a term or concept when ren-

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dering his decision, and the next judge not only repeats but adds to the error. The judicial reasoning that allowed the government to eavesdrop on gamblers and launch "no-knock" raids on drug dealers now permits passengers to be pawed.

Several preposterous presuppositions underlie this reasoning. First, the government always assumes its "interest," which it sometimes cloaks as "society's interest," outweighs the individual's. Whatever the government determines its interest to be—purging the land of poker and pot, extorting taxes, controlling airports and passengers—trumps any individual's right to privacy, property, or even life.

Second, the government has an "interest" in "safe aviation." How it procured this interest is anyone's guess. Unlike the natural rights to life, liberty, and justly acquired property, which "their Creator" has "endowed" on "all men," government's "interests" seem to have materialized, appropriately enough, out of thin air. Flight paths, airports, and runways are goods like any others that would be privately owned but for the government's usurping that ownership. That usurpation is a crime and an outrage, but it confers on the state neither an "interest" in searching passengers nor the right to do so.

The government's third presumption is that flying is a "choice." Judges are apparently seldom faced with driving a couple of cranky kids cross-country in a car whose odometer has turned over 150,000 miles. Also, by "choosing" to fly, passengers give their consent to whatever the government wreaks on them meanwhile. This doctrine apparently applies to any action the government wishes to take, including strip searches, groping, and theft.

Finally, there are no inalienable rights and no absolute truths. Rights depend on what "society" considers "reasonable," "average," or "normal," and they change with society's whims. The Bill of Rights is void unless your neighbors are in a generous mood that day.

These presuppositions permitted the Feds to "protect" aviation after a couple of hijackings in the 1960s and early '70s (dignified as an "observable national and international hijacking crisis" in one decision). Then, in 1974, government made the scary leap from apprehending criminals after they had committed a crime to preventing them from committing it in the first place. The courts declared (in *United States v. Moreno*) that "the hijacker must be discovered when he is least dangerous to others and when he least expects confrontation with the police. . . . In practical terms, this means while he is still on the ground and before he has taken any overt action." In practical terms, it also meant that any passenger could be a hijacker. All passengers and their luggage, therefore, must be searched.

Previous Wounds

The Fourth Amendment might have reared its pesky head here had it not already sustained some serious wounds. In *Silverman v. United States* (1961) the Supreme Court announced that the Founders intended the Fourth to secure a man's right to "retreat into his own home and there be free from unreasonable governmental intrusion." However true that statement was, subsequent decisions emphasized that *only* in his home might a man be free from governmental intrusion; he abandoned such an expectation once he stepped outside. From this sprang much slicing and dicing of freedom, including the bizarre notion that neither automobiles nor public areas such as airports afford the same level of privacy and freedom from the government as homes, so cops may search the former with far more impunity than they do the latter.

One of the most seminal cases in modern thinking regarding the Fourth is *Katz v. United States* (1967). Charles Katz was a bookmaker who used a public phone booth to conduct his illegal business. The FBI attached microphones to the booth and eavesdropped. Katz argued that this constituted an unreasonable search.

The Court agreed but nonetheless dealt the Fourth some fatal blows. First, the court announced that the "Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." How the justices determined that "places" are beyond the Amendment's scope when it clearly mentions "houses" remains a mystery. Also troubling is the Court's conflating "public" with "government." A citizen may eagerly expose to the public what he would be loath to reveal to government, given the latter's proclivities for violence and retribution. A person might display a gun collection over his mantel; folks invited

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into his home would certainly see it, and it might even be visible to neighbors through the front window. But neither visitors nor neighbors are likely to incarcerate the owner for possessing firearms, as is the government. What is knowingly exposed to the public, then, most definitely needs the Fourth's protection in case government also stumbles across it.

Second, the Court decided that eavesdropping on Katz was indeed a search, regardless of "the presence or absence of a physical intrusion." The phrase was merely descriptive in this decision and therefore innocuous, but other judges in other cases pounced on it, took it out of context, and twisted it. Sometime later, Jonathan Lewis Miller reports, freedom from "trespass" was redefined as "freedom from unwarranted invasion of one's right to privacy."[15] Trespassing is an objective act: someone either impinges on property that does not belong to him while installing wiretaps or he does not. But an "unwarranted invasion of one's right to privacy"? One judge's "unwarranted invasion" is another judge's "Why would anyone object to this?" Worse, the Fourth no longer applied unilaterally and absolutely. Instead, requirements must now be met before the Amendment kicked in: not only should the individual have an expectation of privacy, but that expectation also must be one which "society is prepared to recognize as 'reasonable' " (Justice Harlan concurring in *Katz*). Thus if most people do not object to being searched at airports, if they consider it necessary for their safety, the Fourth Amendment no longer applies.

Nor are specific suspicions of specific passengers required for a search. "When the risk is the jeopardy to hundreds of human lives and millions of dollars of property inherent in the pirating or blowing up of a large airplane, that danger alone meets the test of reasonableness." Additionally, the "passenger has been given advance notice of his liability to such a search so that he can avoid it by choosing not to travel by air. . . ." (*United States v. Bell*, U.S. 2nd Circuit Court of Appeals, 1972). In other words, because the government searches everyone at airports, and everyone expects to be searched at airports, the government may search us at airports.

Neither the innocence of the vast majority of passengers nor the effectiveness of the search matter. "Nor would we think . . . that the validity of the Government's airport screening program necessarily turns on whether significant numbers of putative air pirates are actually discovered by the searches . . . . By far the overwhelming majority of those persons who have been searched . . . have proved entirely innocent . . ." (*Von Raab*). The government wins either way, whether it discovers hijackers or not.

The courts have also decreed that no reasonable person will object to forfeiting the Fourth. "[T]he danger [of skyjacking] is so overwhelming, and the invasion of privacy so minimal, that the warrant requirement is excused by exigent national circumstances" (*U. S. v. Epperson*, 4th Circuit, 1972). Airport searching "is not a resented intrusion on privacy, but, instead, a welcome reassurance of safety." Indeed, a warrant would only "frustrate the governmental purpose behind the search" (*United States v. Davis*, 9th Circuit, 1973, quoting *Camara v. Mun. Court*, U.S. Sup. Ct., 1966). Finally, they get it right: frustrating the government's invasion of the individual's privacy and property was precisely the reason for the Fourth Amendment.

> Without any grounds, without even a specific suspicion of a specific passenger, screeners search the flying population at large.

Freedom versus Security

However, in the modern contest between freedom and security, Americans increasingly choose security. Apparently, nothing is sacred—the Fourth Amendment, personal modesty and dignity, airports free of horrific lines, lower ticket prices—so long as the government promises to keep us safe.

And most passengers believe those promises. When the TSA's Office of Strategic Management and Analysis commissioned a survey of passengers at 25 airports, it asked, "How confident are you in TSA's ability to keep air travel secure?" Eighty-two percent answered "fairly confident or very confident."[16]

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But a month after this survey was released, two reports from the government itself demolished this touching faith in bureaucracy. Both the Government Accountability Office and the Homeland Security Department concluded that aviation is no safer now than it was before the birth of the TSA. In tests conducted by undercover inspectors, screeners still miss the same 20 percent of weapons that they did prior to 9/11.[17]

"We need to step back and look at the billions of dollars we spent on the system, which doesn't provide much more protection than we had before 9/11," said Rep. John L. Mica of Florida, the chairman of the House aviation subcommittee as well as an author of the legislation that created the TSA.[18]

But the agency cannot secure a loan, let alone the entire system of American aviation. That's because the TSA has never been an honest response by the airlines to terrorist threats against their property and customers. Rather, it resulted from political pandering to a population panicked by 9/11.

The former chairman of the Homeland Security Committee admitted as much. "After 9/11," said Christopher Cox of California, "we had to show how committed we were by spending hugely greater amounts of money than ever before, as rapidly as possible."[19] Whether that money bought safety for American passengers was beside the point. Instead, the expenditures made government seem involved and caring, which bought vastly more power for politicians.

The TSA has become such an embarrassment with its incompetence, larceny, arbitrary policies, and "hugely greater" budgets that it will likely be abolished.[20] That doesn't mean passengers will recover their Fourth Amendment rights, especially because general searches are turning up treasures beyond nail files: drugs and other contraband are putting more Americans behind bars[21] and yielding more money in fines.[22] Rather, the feds will shift the TSA's "duties" to other bureaucracies. As the government continues to criminalize behavior, and to ban the accouterments of that behavior, airport searches will become increasingly valuable for discovering "criminals." Americans who might object to being frisked on the street, who would insist on a warrant before allowing a cop to toss their home, actually want government agents to search them at airports. After all, that's what keeps them safe.

Imagine their shock when they realize their protectors have become their wardens.

1. http://flatrock.org.nz/topics/terrorism/what_rights_are_left.htm.

2. Mercy Otis Warren, *History of the Rise, Progress and Termination of the American Revolution*. vol. 1 (Indianapolis: Liberty Fund, 1994), p. 28.

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Taxing for Therapy

BY THOMAS SZASZ

The Marxian credo, "From each according to his abilities, to each according to his needs," is the moral foundation of the progressive tax policies of modern "capitalist" societies. The psychiatric credo, "From each producer according to his income, to each psychiatric parasite according to his cunning," amplifies that creed and garbs it in the mantle of therapy.

In American medicine and the media, psychiatric lies and hypocrisy have replaced professional integrity and journalistic skepticism. Mental illnesses are like medical illnesses, but mental patients are not treated like medical patients. Psychiatrists treat patients with drugs, yet don't examine, or even look at, their bodies. Mental illnesses are brain diseases—"chemical imbalances in the brain," according to current psychiatric doctrine—but there is no test to determine whose brain is chemically imbalanced; nor are these allegedly brain-diseased patients treated by neurologists or infectious-disease specialists, as are patients suffering from stroke or neurosyphilis.

Diabetes, cancer, and atherosclerosis are major disease categories. No American suffering from these diseases is excused from crimes or imprisoned by his doctor for rejecting his treatment, nor are special taxes imposed on wealthy Americans to pay for treating these diseases. The only diseases for which Americans are excused from crimes and imprisoned—and now taxed as well—are mental diseases.

One of the ballot initiatives before the voters of California last November was Proposition 63, which read: "Should a 1% tax on taxable personal income above $1 million to fund expanded health services for mentally ill children, adults, seniors be established?" The initiative passed with 54.5 percent of the vote, creating a new Mental Health Services Act. A writer for a mental-health weekly comments: "In a field hungry for its fill of resources, the passage of Proposition 63 stands as a gleaming cornucopia. The quip is that planeloads of mental health professionals, researchers and administrators will be flocking to the state in the coming year in a kind of mental health 'gold rush.' "

According to Harvard mental-health expert Kara Zivin Bambauer, Proposition 63 was supported by "police, teachers, representatives of labor unions, and nurses—trusted groups that embody core values of many members of society and who make excellent advocates." How will funds be allocated? On the basis of "a county's proportion of mental disorders in households with incomes less than 200 percent of the federal poverty level." It will be fun to watch the competition among county mental-health administrators for the largest number of qualifying households.

As Samuel Johnson famously remarked, "Hell is paved with good intentions." Even more to the point, the distinguished development economist Peter Bauer defined foreign aid, ironically but accurately, as "the transfer of money from poor people in rich countries to rich people in poor countries." Why? Because money allocated for foreign aid goes to rich rulers who, instead of helping poor people, oppress them. Money generated by Proposition 63 will go to mental-health professionals who, instead of helping people, deprive them of liberty, stigmatize them as crazy, and poison them with psychoactive drugs—as the "standard of care" in psychiatry mandates.

Even the mainstream media—mouthpieces of the American Psychiatric Association and its lobbying arm, the National Alliance for the Mentally Ill—acknowledge that the upshot of psychiatric miracle drugs, deinstitutionalization, and the much-touted Decade of the Brain is the creation of old snake pits with new names on the doors. Last May PBS televised one of its "Frontline"

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reports, titled "The New Asylums." The program, according to the reviewer in the *New York Times*, showed that "500,000 mentally ill patients, who in earlier decades would have been treated in hospitals, are now mistreated in prisons. . . . The show never feels like the problem is being solved . . . . Just by venturing into these Stygian cellblocks . . . the bedlam is all too faithfully and nauseatingly depicted." The program failed to show that more mental-health professionals than ever are making more money than ever managing more psychiatric prisons, torturing more inmates with coerced "medications" and punitively prolonged periods of incarceration.

Where do the denominated beneficiaries of California's new largess stand on the Mental Health Services Act? The *New York Times*, *Time* magazine, and CNN do not report their opinions. They report only the opinions of celebrity mental patients—like Brooke Shields, Mike Wallace, and William Styron—who shill for the psychiatric Gulag, protected from its ravages by their money and influence. Poor persons stigmatized as insane have no access to the mainline media. Thanks to the Internet, however, we can now learn what many of them think of their psychiatric saviors and their "services." Calling themselves "psychiatric survivors," many former inmates regard themselves as psychiatric victims, not psychiatric patients: they demonstrate against psychiatrists at their professional meetings, hold an Annual Bastille Day Demonstration/Celebration on July 14, and are "fast to call attention to the coercive and oppressive nature of organized psychiatry." Their platform states: "We speak for ourselves. We seek an end to forced treatment. . . . We demand an end to destructive psychiatric labeling." The flyer distributed by the Mental Patients Liberation Alliance for its 25th Annual Bastille Day event stated: "Help!! Break the Silence About Psychiatric Oppression. Stop Forced Shock Treatment."

Media Indifference

The mainstream broadcast and print journalists are oddly incurious about the opinion of large numbers of "consumers of psychiatric services," in scores of countries, denouncing the mental-health profession's most characteristic feature—its power to coerce. We may attribute this to the media's economic dependence on advertising revenue from pharmaceutical companies manufacturing drugs given to millions of persons worldwide and its generally liberal-statist bias. It is more difficult to explain the resolute lack of interest most libertarian publications display toward our society's premier institution of state-sanctioned fraud and force—psychiatry.

California's Proposition 63 will provide an estimated $1 billion per annum for supporting and arming agents of the state to "care" for mental patients in ways the patients regard as persecution and punishment. Nor is that the end of the troubling implications of Proposition 63 and the growing popularity, especially on the Left Coast, of replacing the Constitution and state and federal legislatures with people voting on ad hoc propositions. The view that mental illness is so serious a social problem that it justifies imposing a special surtax on the rich opens a Pandora's Box of rationalizations for special taxation. I venture to guess that at least 54.5 percent of Americans, and probably many more, regard drug abuse, racism, sexism, ageism, and atheism as mental illnesses and social problems. Why not ask them to pass propositions surtaxing the rich—and then the less and less rich—to rid the nation of all these "diseases" as well, and help turn America into a mentally healthy nation?

Anyone who believes for a moment that all that money will improve the "mental health" of Californians should, as Sam Goldwyn memorably put it, have his head examined. The history of psychiatry is a story of increasing public funds creating increasing numbers of mentally ill patients, more and more of whom remain officially "underserved," while more and more reject the sadistic practices politicians and psychiatrists call "mental health services." California's 2005 Mental Health Services Act surpasses the wildest dreams of communist economic and political planners: the rulers call coercion a "medical service" and provide ever more to people who exhibit a "medical" need for it.

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Does Obesity Justify Big Government?

BY RADLEY BALKO

Last January media outlets reported that cancer had overtaken heart disease as the number-one killer in the United States. Sounds scary, no?

Fear not. As is usually the case, beyond the scary headline, deep into the copy, came the real story. *Both* diseases are in steady decline. Cancer rates and deaths from cancer have fallen every year since the early 1990s. The thing is, incidence and mortality rates of heart disease and stroke have fallen *even more* over the same period (25 percent since 1990). So while it's true that cancer has "overtaken" heart disease, that's really not the story. The story is that both are in decline, heart disease remarkably so.

Late last February, another health story hit the wires: Americans are living longer than ever before. Life expectancy is up across the board, among both genders and all ethnicities. The gaps in life expectancy between men and women and between black and white are shrinking, too.

At the same time all of this good news has transpired, the number of Americans classified as "obese" and "overweight" has been on a steadily upward trajectory since about the mid-1970s. In 1985 eight states reported that at least 10 percent of their populations were obese. By 1990 the number rose to 33. By 2001, it was all 50.

Of course, as you might expect, the scariest numbers about the condition of America's waistline are overblown—there are significant problems with the way the government measures obesity, which I'll discuss in a moment. But most researchers agree that the average American is carrying 10–15 more pounds than he was 30 years ago.

If you believe the media, nutrition activists, and public officials, those extra 10–15 pounds portend a looming health-care catastrophe. U.S. Surgeon General Richard Carmona, for example, said in 2004 that childhood obesity is "every bit as threatening to us as the terrorist threat." A congressionally commissioned report from the Institute of Medicine published in the fall of 2004 called for massive government intervention to stave off the crisis. One author said we need "nothing short of a revolution." The World Health Organization warned, "If immediate action is not taken, millions will suffer from an array of serious health disorders."

If you believe the media, nutrition activists, and public officials, those extra 10–15 pounds portend a looming health-care catastrophe.

But if we've been getting fatter for 30 years, shouldn't we be seeing at least the front end of this coming crisis? Why are we getting *healthier*? In fact, a closer look at the statistics suggests that even some of the diseases most associated with obesity are in retreat.

Take cancer, for example. In 2002 the BBC reported researchers had found that "the more excess weight a person carries, the greater their risk of certain types of cancer." In 2004 *USA Today* echoed that claim. "The nation's current epidemic of overweight and obesity is likely to drive up cancer rates in coming years," the paper wrote. The Associated Press said that "heart disease

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and diabetes get all the attention, but expanding waistlines increase the risk for at least nine types of cancer, too." (Other sources put it at ten.)

But of the ten types of cancer commonly associated with obesity, deaths from nine—pancreatic, ovarian, gall bladder, stomach, prostate, kidney, colorectal, cervical-uterine, and breast—have *decreased* since 1992, some of them significantly. Only one—esophageal cancer—has seen an increase in mortality rates over that period.

And heart disease? Case Western Reserve University researcher and obesity skeptic Paul Ernsberger notes that "The greatest improvements are in cardiovascular disease deaths, which are most strongly linked to obesity."

As noted, the gap in life expectancy between black and white is shrinking. But at the same time, blacks as a group have put on more weight than whites. Incidence of obesity among black women, for example, jumped 11.7 percent between 1988 and 2001, compared to 7.3 percent among white women. Yet black women increased their life expectancy by 2.3 years, versus 1.3 years for white women over that period. It's true with men too. The rate of obesity among black men jumped by 7.5 percent, versus 7.0 percent among white men, yet black men on average added 4.2 years to their lives, versus 2.8 for white men. So blacks have narrowed the longevity gap with whites, even while widening (pardon the pun) the "obesity gap."

> America is at war with obesity. We could eventually come to find, however, that this war's origins are as dubious as the sinking of the *Maine*.

In 2003 the *Journal of the American Medical Association* published a study commissioned by the Centers for Disease Control that said 400,000 annual American deaths are attributable to obesity. A Lexis search reveals that as of late fall 2004, that 400,000 figure had been cited over a thousand times in mainstream media outlets. It was also routinely cited by politicians, activists, and bureaucrats as justification for large-scale government intervention to curb our pudginess. At a *Time*-ABC News summit on obesity in June 2004, attendees were inundated with the refrain that "obesity will soon overtake smoking as the number one cause of preventable death in America." Demands for government action inevitably followed.

But there were fatal flaws in the CDC study's methodology. First, it was a "meta" study, which incorporated data from dozens of other studies, some of them dating back to the 1940s, and attempted to apply that data to today's demographics. Second, the study used the Body Mass Index (BMI) as its arbiter of obesity, a crude formula that factors only height and weight and which consequently mislabels as "overweight" or "obese" people who are extremely fit. According to the BMI, for example, half the National Basketball Association is either overweight or obese. But few would suggest they're out of shape or unhealthy. Third, the study assumed that all premature deaths by obese people were caused by obesity—a leap of faith, to say the least. Finally, the study lumped the "overweight" in with the "obese," even though there's little evidence that overweight has any seriously ill-effects on health. The study's own data showed no correlation between being overweight and premature death, and in fact showed some benefit.

In December 2004 the CDC reluctantly admitted its study was flawed, but only by a little—20 to 25 percent. Critics insisted the flaws in the study's methodology were much more significant, and in response the National Institutes of Health finally commissioned a review. In April an independent team of researchers led by the University of North Carolina's Katherine Flegal released a new study sharply at odds with the original study. Flegal's team determined that it exaggerated the effects of obesity by some 300 percent. She put the real number of annual deaths attributable to overweight and obesity closer to 100,000. What's more, the new study found that modest overweight actually *protects* against premature death. When adjusted for the lives *saved* by extra weight, the number of deaths due to obesity falls to around 25,000—putting the original figure off by a factor of 15.

A subsequent internal investigation revealed that CDC officials were actually made aware of the original study's flaws during the peer-review process. So why was

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the more alarmist study published and relentlessly promoted anyway?

As it turns out, one of the co-authors of the original study was Dr. Julie Gerberding, who also happens to be the current director of the CDC. Comments from members of the internal-investigation team reveal that the study was likely published over objections from other scientists at the CDC because the head of the agency's name was on it.

Gerberding still refuses to accept the new numbers. She has told the media that the CDC will continue with its anti-obesity campaign, which will continue to ignore the subsequent study.

Governments Spring into Action

Local and state legislatures, the U.S. Congress, regulators at all levels of government, and public-health advocates have already seized on the idea that nearly a half million people are needlessly dying every year because of their love handles. The Bush administration has earmarked millions of federal dollars for anti-obesity initiatives (though not nearly enough for the obesity warriors). Congress is considering menu-labeling laws; some in Washington have suggested taxes on high-fat or high-sugar foods; and others are calling on the Federal Trade Commission to regulate the marketing of junk food. Many states have banned junk food from school cafeterias. And Medicare announced last summer that it would begin considering paying for treatment for obesity, a new entitlement that could prove nearly as costly as the prescription-drug benefit.

America is at war with obesity. We could eventually come to find, however, that this war's origins are as dubious as the sinking of the *Maine*.

None of this is to say extreme obesity is healthy, or even benign (though, as we've seen, some studies suggest a few extra pounds may give a mild protective effect, particularly among the elderly). The decline in incidence and deaths from heart disease and cancer are almost certainly due to advances in medical research and technology. We're getting better at uncovering these diseases early, and with pharmaceutical marvels like statin drugs and chemotherapy, we're making huge leaps in treatment once we've diagnosed them. And it's of course likely that the gains we've made would be even more significant were the most obese among us a bit more svelte.

But the notion that our expanding waistlines have put us on the verge of a calamitous offensive against our health-care system simply isn't borne out by the evidence. And so these incessant calls for immediate, large-scale government interference in how we grow, process, manufacture, market, prepare, sell, and eat our food ring hollow, hyperbolic, and needlessly invasive.

Those of us who value free markets and personal liberty wouldn't support government intervention even if the worst pronouncements of the anti-fat activists were proven true.

A recent *Seattle Times* investigation of the obesity hype found that much of the panic can be traced back to an aggressive campaign in the late 1990s by the pharmaceutical companies with diet drugs like Phen-Phen in the pipeline to get the government in the business of weight-watching. In 1996 the industry convinced the federal government to move the goalposts when it comes to defining "overweight" and "obesity." At hearings dominated by researchers with ties to the pharmaceutical industry, an FDA panel eventually agreed. One magical night in 1997, some 29 million Americans went to bed healthy and woke up the next morning "overweight" or "obese." And none of them gained a pound.

Debunking junk-science studies and bogus Chicken-Little pronouncements are important to refute the idea that obesity represents a looming health-care crisis. But those of us who value free markets and personal liberty wouldn't support government intervention even if the worst pronouncements of the anti-fat activists were proven true. What we put into our mouths, how often we exercise, and what we feed our children are simply none of the government's business. How did we get to the point where it could be?

There are two answers to that question, and they should be considered separately. First, we've vastly expanded the concept of "public health" to include

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government intervention into nearly every sphere of our lives. And second, our health-care system is slouching toward socialism, a troubling trend that undermines personal responsibility and exacts a public cost on private behavior.

Public Health

The proper conception of "public health" is innocuous enough. There are unquestionably some threats to our health and safety for which the remedies constitute a legitimate public good. They're limited to risks to which no rational person would subject himself—examples might include communicable diseases like tuberculosis or typhoid, calamitous events like asteroid impacts or tsunamis, or biological or chemical terrorism. Under these limited circumstances, it's understandable, even advisable, for a government limited to protecting the lives and property of its citizens to take collective measures to eradicate or minimize such risks, or minimize the damage should they come to pass.

But "public health" as it's advocated today goes well beyond public goods. Over the last century, "public health" has come to mean state pressure coercing us to avoid risks, even risks we knowingly and willingly undertake. The most obvious and conspicuous example was alcohol prohibition. And though Prohibition took an untold number of lives, bred corruption, and legitimized criminal behavior, it is distinguishable from more recent expansions of public health in that lawmakers at least recognized it as a failure and repealed it. (Unfortunately, we don't seem to have learned. The last 20 years have seen increasingly aggressive restrictions on the production, sale, and consumption of alcohol by local, state, and federal government.)

But the Harrison Act—which fired the first shots of the drug war—was passed even earlier, in 1914. Drug prohibition has marched onward since. Its episodic ratchetings-up and coolings-down have progressed to a particularly aggressive and militaristic incarnation over the last 25 years.

Once we've accepted a definition of "public health" expansive enough for government to dictate what we can and can't put into our bodies, it's a short leap to seatbelt laws, motorcycle-helmet laws, and prohibitions and restrictions on all sorts of other risky behavior. More recently we've been given "public" smoking bans that extend to private businesses such as bars and restaurants. The Supreme Court recently upheld an Alabama ban on sex toys and marital aids. And parents are all too aware of the myriad regulations on the risks to which they can legally subject their children. Over just the last several years, governments at some level have prohibited motor scooters, "pocket bikes," all-terrain vehicles, snowmobiles, alcohol vaporizers, and fireworks, to name just a few—all designed to keep people from hurting themselves.

So it shouldn't be the least bit surprising that "public health" might now come to include the size of our pants and the content of our refrigerators.

The justification for expansions of the government's power to promote "public health" is typically couched in "the number of lives this will save." Sometimes, we're told that a law will add x number of years to the average life. The most-used and easiest tactic is to simply state that the law's necessary to protect "the children."

The ad nauseam recitation of the 400,000 figure is a good example, as is a report released in January 2004 stating that being overweight at 40 would cut several years off the typical life. The public-health activists at the Center for Science in the Public Interest have long been fighting for marketing restrictions on junk food, particularly on programs directed "at our children."

Longevity seems to be an obsession among the public-health crowd. Apparently, there is no limit to the costs they're willing to endure if some policy promises to lengthen lives. It seems improbable to them that there may be people who'd sacrifice a month or two of their senior years for the lifetime of pleasure some get from cigarettes, a night of hard drinking, or a slice of cherry pie after dinner. It's as if adding more days to the end of our lives were the only reason for living.

Even then, as British doctor and author Michael Fitzpatrick explains in his book *The Tyranny of Health*, death can't be prevented. It can only be postponed. And "death can generally be postponed only for a relatively short time by relatively intensive preventative measures," Fitzpatrick writes. That is, high-cost measures that would typically add just a few days or months to the average life.

There's certainly nothing wrong with studies or

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public-awareness campaigns designed to discover and inform us about how we can make healthier choices. It's that the "advice" rarely stops there. Inevitably, such studies and campaigns lead to calls for government policies aimed at increasing longevity, policies that take options away from people who may value pleasure, convenience, or indulgence more than perfect health or a prolonged geriatry.

In the eloquent polemic *Cigarettes Are Sublime*, Richard Klein writes, "Healthism in America has sought to make longevity the principal measure of a good life. To be a survivor is to acquire moral distinction. But another view, a dandy's perhaps, would say that living, as distinct from surviving, acquires its value from risks and sacrifices that tend to shorten life and hasten dying."

Classical liberals should argue against the ever-expanding "public health" initiatives not only because they're supported by junk science or manipulated data (though that's often the case), but because the freedom to risk, indulge, and "sin" are essential to preserving individual liberty and a free society. Governments of free people aren't authorized to ensure good health. They're charged with securing liberty, which most certainly includes the liberty to have bad habits.

Socialized Medicine

The other chief reason why "public health" has been able to include ridiculous measures like obesity legislation and seat-belt laws is our increasingly collective system of health care. Even private health care has a collective component to it. Today, routine maintenance-oriented doctor visits are typically paid for by employer-provided health insurance, calling to mind the old Milton Friedman axiom about how generous we tend to be with other people's money. Health insurance by definition pools risk. But many states (as well as the general culture of the health-care industry) put restrictions on so-called "medical underwriting"—or allowing health insurers to vary premiums based on risk, the same way auto or life insurers do. All these factors together create a system of perverse incentives that undermine the notion that we ought to let people take personal responsibility for their own health and well-being. Healthy people subsidize unhealthy people. When the consequences of poor decisions are shared, there's less incentive to make good ones.

And that's just the private sector. At the same time, politicians seem to be falling all over themselves in a rush to expand Medicare and Medicaid benefits for the aging, politically potent Baby Boom generation. The Cato Institute estimates that the new prescription-drug benefit could in the end exceed a trillion dollars. Medicare's noodling with the idea of covering obesity treatments could very well end up costing nearly as much.

This creeping socialization of medicine gives government new license to meddle with our private affairs.

This creeping socialization of medicine gives government new license to meddle with our private affairs. It creates a climate where excessive state interference in the most intimate of personal matters—what we put into our mouths—becomes not only acceptable among the electorate, but *desirable*. After all, if that cheeseburger you're eating clogs your arteries and puts you in the hospital, your poor choices will be reflected in my health-insurance premiums. If you're on Medicare or Medicaid, it'll show up in my taxes.

That's exactly the argument the government put forward in the summer of 2004, when the Department of Health and Human Services (HHS) announced that Medicare would consider covering the costs of obesity treatments, including diet plans, counseling, and gastro-bypass surgery, all new frontiers for preventative government intervention. HHS officials insisted that the change would save taxpayers money over the long haul if obesity were prevented or treated before the ill-health effects associated with the condition begin to present themselves.

It isn't difficult to see how this argument could be applied in a larger sense—that we need to tax fatty or sugary foods, for example, to save everyone money on health-insurance premiums and to keep the obesity problem from bankrupting Medicare and Medicaid. In

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fact, that exact argument *has* been made—and by a credentialed *conservative*, no less. On *National Review Online*, David Frum wrote: "And as Americans struggle with an epidemic of obesity—and the ensuing costs to the taxpayer—conservatives who favor (as almost all conservatives do favor) Medicare and Medicaid need to ask themselves whether their easy libertarian attitude to the worst practices of the fast food industry retains its relevance. Big Gulp drinks and super-sized fries are making America sick—and you are paying the bill. A little moderation would cure a lot of medical and fiscal ills; and a little incentive might induce that moderation."

It's bad enough hearing that kind of talk from the left. But when it comes from the right, too, it's a bad harbinger for what might be ahead.

The solution to this is to return some semblance of personal responsibility to the health-care system. Health, or medical, savings accounts (HSA, MSA), for example, enable consumers to roll money not spent on routine medical procedures into a retirement account, tax-free. In contrast to the current system—which if anything encourages poor decisions—HSAs or MSAs encourage consumers to take care of themselves. Money not spent on visits to the doctor's office is money saved for retirement.

Another suggestion would be to free up health insurers to do medical underwriting. The Bush administration has said it sees no federal barriers to the practice, so to the extent that barriers exist, they're likely at the state level. Consumers in any state should be free to purchase health insurance from companies in any other state under the laws and regulations of the state where the insurer is incorporated. This would not only free up health insurers to medically underwrite, it would create a kind of competition between the states to ease regulatory burdens to attract insurers.

The result would unleash market forces on the task of finding the best carrot-and-stick approach to encouraging healthy lifestyles. Insurers would compete for customers, while states would lower regulatory barriers. Currently, there's much debate over whether the ill-health effects often associated with obesity are from obesity itself or from the sedentary activity levels that often accompany being overweight. Hundreds of insurers competing with one another to both attract consumers and develop plans that reward the healthiest habits among their patrons (which of course benefits the insurers through lower health-care costs) might bring us closer to an answer to such questions. At the very least, if each of us were solely responsible for the consequences of our diet and activity level, the point would be rendered moot from a public-policy perspective.

The bizarre thing about the obesity debate is that less than a decade ago, the very thought of it was often discussed only in parody, or in a *reductio ad absurdum* context. Opponents of the tobacco lawsuits often invoked the idea of trial lawyers suing fast-food restaurants as one example of the "parade of horribles" that might follow should the tobacco suits be allowed to go forward.

Well, we're here now. This is post-*reductio* America. If the anti-obesity proposals currently up for debate become law, it would be difficult to think of any aspect of our lives that would be out of the reach of the public-health activists. Or, as one advocacy group that represents the food industry has put it, the question will no longer be "what's next?" . . . but *"what's left?"*

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When Safety Nets Fail

BY JIM PERON

An elderly woman sat on the stone steps of the St. Alexander Nevsky Cathedral clutching a small handful of wildflowers picked from a field somewhere. She offered them up to any passerby, hoping to earn just a few cents for them. The air in Sofia was frigid, but at least the rain had finally stopped. I wondered if she had sat there in the rain the day before. I suspected she was there every day.

The huge gilded cathedral was a gift to the Bulgarian people from the last tsar of Russia. Orthodox believers regularly came in to pray before the icons and light candles. Some bought small bouquets of flowers to lay before the icons. These acts of worship were what inspired this old woman to spend her morning picking tiny flowers. That and hunger.

Bulgaria was part of the Soviet bloc. It was a socialist state that promised a social "safety net." To provide that safety net it took away individual choice and freedom. The Bulgarian people were shackled from head to foot by the state. All work was for the state, and in return it promised to care for them during their declining years.

Bulgaria was a socialist state that promised a social "safety net." To provide that safety net it took away individual choice and freedom.

But socialism was a system doomed to failure from the start. The great Austrian economist Ludwig von Mises predicted the collapse of socialism nearly 90 years ago. He said that socialism was not a new economic system but the obliteration of economics all together. Socialists tried to abolish prices and profits—the two main feedback loops of an economic system. Without them the socialists were flying blind.

Inefficiency and mistakes accumulated. Five-year plans simply could not do what markets did so easily. No social planner could accumulate the diffused knowledge needed to make rational economic decisions. They guessed. And often when completely desperate they copied from the West. But Western systems were the result of prices and profits performing their functions. What worked well under one set of local circumstances couldn't translate to another locale. It was as if a mother bought shoes for her child by measuring the feet of the neighborhood children and averaging it out.

The socialist system was doomed. It was being crushed under its own dead weight. And then in just a few short weeks socialist nation after socialist nation collapsed. The collapse was the result of political protests. The people who "benefited" under socialism could no longer live under it. They took to the streets. But what inspired them was the long-term economic decay that socialism created everywhere and anywhere it was tried.

Just a week after seeing this woman I stood in the main square of Prague. It was here, in 1989, that hundreds of thousands of Czechs stood up for freedom, helping to knock down Marx's house of cards. I saw the memorials to those who gave their lives to end the socialist domination they experienced. One young student, in protest to the horrors of communism, had set

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himself alight in the main square. Not long afterward a second student did the same thing. I visited the museum of communism and walked through the exhibits. The horrors were real. The promises illusionary.

The left promised not totalitarianism and horror, but prosperity and equality. They promised safety nets for all. No one would be needy again. But it didn't work. As Mises showed, it couldn't work.

I walked past the old woman outside the cathedral. I had seen her sitting there when I went inside. I read in the guide that such things were common. And unlike in the West, where guidebooks often encourage visitors to ignore "beggars," this guidebook said these older women were often alone and had no income except for what they earned hawking wildflowers to worshippers.

I started to walk away but stopped. I didn't have much cash on me for this trip and had converted only a small sum into the Bulgarian currency. I knew what I needed for dinner and the taxi to the airport. I turned back and handed her a 20-lev note. It was a mere pittance in the West, about ten Euros, but it was far more than she would receive all day. At the hotel it bought a full dinner. At the local grocery stores it would obviously go much further. I just wanted to hand it to her and leave quickly. Her plight was too disturbing to want to linger.

I turned back and handed the old woman a 20-lev note. It was a mere pittance in the West, about ten Euros, but it was far more than she would receive all day.

I reached out with the note, and she looked up. She took it, but clutched my hand at the same time. She wouldn't let go. She pulled my hand toward her and started kissing it repeatedly. She was saying something, but I couldn't understand her. I kept telling her it wasn't necessary, but she couldn't understand me either. As I stepped back I looked down at her face chiseled by hardship and pain. I realized she had lived through the worst years of Bulgarian history. She suffered the horrors of World War II and the tyranny of Todor Zhivkov, the communist dictator who ruled her nation with an iron fist.

She pressed me to take the small bouquet from her. I declined, thinking it best she keep it to sell to someone else that day. I hoped she would have more customers.

The rest of our group was wandering around the stalls set up across the square from the towering dome. Rita Jongen, a good friend from the Netherlands, was standing with me waiting for the others. I suggested that we walk over to some of the small stands on this side of the cathedral just to browse.

There was a row of maybe 15 to 20 small tables filled with knitted ware and other goods. The vendors were all women and mostly elderly. These were the lucky ones. They had the skills to make items to sell to the tourists. I was now cash poor and not able to purchase anything. But as I do in the West all the time, I was just window shopping, although none of these women had a window—just an old table on the sidewalk. Each stood next to the table wearing several layers of clothing to protect themselves against the frosty air.

As Rita and I walked slowly past the tables, I stopped looking at the goods for sale. I watched the women instead. The entire row of women came to attention when they saw us walking by. They would pull out their favorite item and display it for us. Their expression changed; so did their posture. They were trying desperately to sell us anything they could.

Food on the Table

In much of the West shop clerks often ignore the customer. It makes little difference to them if they have a sale or not. For these women the sale meant food on the table. It was all they had to offer. They were proud of their goods. We walked to the end of the tables, and Rita turned to walk back. But to walk back meant walking past those women again, and I could not do it. I saw their faces and their desperation. I couldn't buy from one of them at that point. And I knew I couldn't buy from all of them. That was what they needed most—a customer—and I couldn't be that customer.

I asked Rita to step into the street instead. I told her I couldn't go back the way I came. I couldn't endure the

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look of anticipation as we walked back toward a table or the despair when we passed by without purchasing anything.

These women reminded me too much of my own grandmother. She knit blankets as well, but not out of need. I still cherish the large blanket she knit for me many years ago. My great-grandmother came from Eastern Europe. I still remember her from my childhood, though we could never speak to each other. She never learned English. Because my great-grandmother immigrated, my grandmother had a decent life. She worked until she retired at 65. She saved a bit here and there. She and my grandfather bought a house together in the 1940s, which was hers till she died.

She was only a shop clerk. My grandfather was a steelworker at the local mills. But they ate well. The house was heated and air-conditioned. It had a nice yard that made Grandma proud. She loved giving gifts to her grandchildren and lived until she was 95 years old. She survived mainly not on a safety net, but because she worked in a society where effort was rewarded. She saved. For much of my grandmother's life there was no Social Security. She never took welfare and never would have even if it were needed. She never really had a safety net. She had freedom.

These women in Bulgaria did not have freedom. They had a safety net. The socialist "safety net" may have killed thousands, tortured thousands, imprisoned tens of thousands, but it existed. It promised "from each according to his ability, to each according to his need." But it couldn't deliver. It took away opportunity for them to provide for themselves when it took away their freedom. In return it promised a safety net that proved illusive. It was a "grand" idea, but one that couldn't work and that didn't work. And the failed promises of socialism were visible in the faces of each of these women.

I am told that we advocates of liberal capitalism are heartless. We don't want to provide a safety net to the vulnerable in society. But what our critics ignore is that their safety nets are mirages conjured up by their own magical minds. They don't really exist. They result from plundering private wealth, but the very act of plunder destroys wealth production. It sets in motion a series of incentives that undermine the ability to produce and that inadvertently increase human needs.

From each according to his ability, to each according to his need is a formula guaranteed to destroy ability and increase need. The socialist illusion can only survive for so long and then it comes crashing down under its own dead weight. The great problem is that when that happens many innocent people are caught in the avalanche. These women were probably such people.

Private Alternatives Destroyed

For their entire lives they were told the socialist safety net would take care of them. But the net disintegrated. One day it was there, and the next it was gone. Worse yet, during the creation of the net the private alternatives to it were intentionally destroyed. Individual initiative was undermined and discouraged. The great collective was going to exist long after the individual died. That collective would care for the needy, the old, and the vulnerable. But it didn't for long because it was a system that was self-defeating.

What horrifies me is that the West has not learned the lessons that are so cruelly taught in the former Soviet-bloc nations. People believe that a slower form of creeping socialism won't have the effects of full-fledged socialism. They believe that some socialism can work, provided you don't let it get out of hand. But they forget that the incentives created by the system are what doom it. They reward need and punish ability, and then wonder why need increases in spite of their plans, programs, and policies. Today in most Western countries anyone can be on welfare in one form or another.

Socialism isn't just for the poor anymore. The new, improved, Westernized socialism promises handouts to all. Corporate leaders line up for government subsidies. University students can't imagine life without the dole. Single mothers don't worry about fathers for their children since they have Nanny to care for them.

The left wants a world where all are beneficiaries relying on the goodness of Nanny to care for them. Of course to pay for this, taxes will have to go up. No worries, they tell us. They crow that one can have good economic growth with high taxes. So each day creeping socialism picks up a little speed. Each day the incentives create more needy and make growth harder to accomplish. And those at the economic margin—where work costs more than it's worth—are sucked into the depend-

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ency vortex. Then the margin shifts a little more, and those individuals at the new margin find themselves destroyed by this economic black hole.

More and more dependency is created. Private alternatives are crowded out or banned. And the socialists promoting this plan ignore what happened in the Soviet bloc. They don't look into the despair-ridden faces of those who relied on a safety net that has crumbled. The left ignores that its system is doomed to fail again. It ignores the multitudes who are counting on the system to sustain them. The West is making the same mistake.

We know the disaster is coming. Across the Western nations the social welfare/pension system is unsustainable. The warnings have been sounded repeatedly from without and within the various governments. Yet almost without exception the politicians ignore the warnings in their pursuit of power and votes. They don't want to lose support by being honest and telling people they were taken for a ride. The welfare state the people depended on is demographically doomed. The number of recipients is destined to skyrocket as Baby Boomers retire, and birth rates have plummeted so far that each year there are fewer workers to sustain the retirees.

I fear that one day our streets may be littered with the old selling flowers in the hopes of earning a few cents to buy a loaf of bread.

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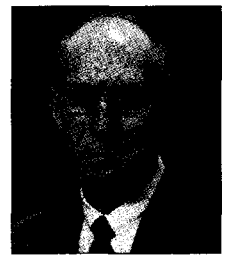
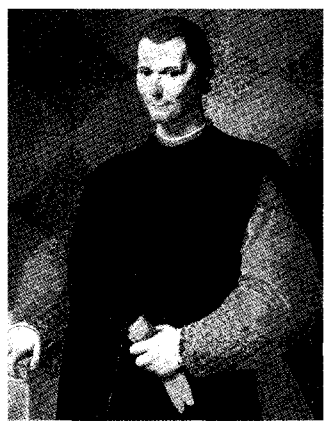


The Economic Policy of Machiavelli's Prince

BY ROBERT HIGGS

Niccolò Machiavelli, statesman and writer of Renaissance Florence, got what countless writers have sought and only a few have achieved: his name became immortal. It is known not so much as a proper noun but as an adjective, and that adjective is not one in which he could take great pride.

At times, *Machiavellian* has served as a synonym for diabolical; in our own time it denotes the cynical and unprincipled conduct of organizational leadership, especially leadership of the state. The Machiavellian leader seeks the augmentation and perpetuation of his own power and will do anything, no matter how underhanded, conniving, or even murderous, to gain his objectives.[1]



Niccolò Machiavelli

Machiavelli the man probably deserves a better remembrance. He was, in today's idiom, not such a bad guy. He seems to have been a loyal friend; he favored republican government; he even had a sense of humor.

Machiavelli was also a political scientist of historic stature, the first to study politics not by focusing on the realization of normative ideals, but by paying close attention to actual political conduct. Francis Bacon wrote in 1623, "We are much beholden to Machiavelli and other writers of that class who openly and unfeignedly declare or describe what men do, and not what they ought to do."[2]

If he had a glaring fault, it was an inclination to ingratiate himself with the powers that be. Indeed, he wrote his most famous work, *The Prince* (1513), in an attempt to curry favor with the Florentine leader of the day. The dedication reads, "To the Magnificent Lorenzo di Piero de' Medici."

This same Lorenzo the Magnificent represented a family of merchant princes whose charming motto was the forthright declaration: "money to get the power, power to keep the money." Rarely has anyone expressed the essence of politics so pithily.

In *The Prince* Machiavelli is concerned for the most part to arrive at rules of expedient conduct for someone who seeks to acquire or to retain governmental power. In this quest he briefly surveys a number of historical episodes in which rulers and would-be rulers acted either aptly or inaptly, and he draws lessons from this historical evidence to support his arguments. Much of the work pertains to war, which Machiavelli considers a recurrent event in political life as rivals vie for supremacy, but he also devotes some attention to economic policy.

Like David Hume three centuries later, Machiavelli recognizes that "a Prince can never secure himself against disaffected people, their number being too great," and therefore "[h]e who becomes a Prince through the favour of the people should always keep on good terms with them; which it is easy for him to do, since all they ask is not to be oppressed."[3] Fortunately for the ruler, the masses do not make great or complicated demands:

> A Prince . . . sooner becomes hated by being rapacious and by interfering with the property and with the women of his subjects, than in any other way. From these, therefore, he should abstain. For so long as neither their property nor their honour is touched, the mass of mankind live contentedly, and the Prince has only to cope with the ambition of a few, which can in many ways and easily be kept within bounds. (47)

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Machiavelli also recognizes that the ruler will thrive better in a prosperous realm than in an impoverished and discontented one:

> He ought accordingly to encourage his subjects by enabling them to pursue their callings, whether mercantile, agricultural, or any other, in security, so that this man shall not be deterred from beautifying his possessions from the apprehension that they may be taken from him, or that other refrain from opening a trade through fear of taxes; and he should provide rewards for those who desire so to employ themselves, and for all who are disposed in any way to add to the greatness of his City or State. (61)

Had this advice been taken universally, it probably would have sufficed to create economic growth and thus to eliminate poverty everywhere on earth.

Restated by Adam Smith

In the late eighteenth century Adam Smith could scarcely improve on Machiavelli's sound counsel. In *The Wealth of Nations*, he restates it as follows:

> Commerce and manufactures can seldom flourish long in any state which does not enjoy a regular administration of justice, in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts from all those who are able to pay. Commerce and manufactures, in short, can seldom flourish in any state in which there is not a certain degree of confidence in the justice of government.[4]

Even today, economic-development experts cannot give rulers any more important advice about how to create a flourishing economy anywhere in the world.

Why then have so many countries failed to achieve substantial, sustained economic development, and even the most prosperous ones fallen far short of their potential for such development? The brief answer is that their rulers have been too Machiavellian, in the worst sense, for their countries' good—and in many cases ultimately too much so for the rulers' personal good as well.

Rulers know—or they ought to know—from the wisdom of Machiavelli, Smith, and other sages that the key to economic prosperity and growth is to use their powers to enforce secure private property rights. Yet time and again they have violated these rights in order to seize resources for their own consumption, often to fight a war. In brief, rulers have repeatedly resorted to plundering their own people. Instead of keeping their promise to protect the people's lives and property and to administer justice impartially, they have overridden the people's rights and caused the devastation of their own realms.

Searching for a means of preventing this destructive opportunism, philosophers, economists, and others have sought devices—written constitutions, governmental structures, conditional pledges—to confine the rulers to their legitimate tasks and to punish them for overstepping their proper authority. Lately, the magic bullet has taken the form of what economists call "credible commitment," a means whereby a ruler's own incentives are brought into conformity with his staying in line. Unfortunately, so far no long-lasting means of securing credible commitment has been discovered. Therefore, so long as we are stuck with government as we know it, we shall have to endure Machiavellian rulers in the worst sense.

1. Here and elsewhere in this essay, I rely on Felix Gilbert, "Machiavellism," in *Dictionary of the History of Ideas*, vol. 3, pp. 116–26, available at http://etext.lib.virginia.edu/cgi-local/DHI/dhi.cgi?id=dv3-15. See also John W. Danford, *The Roots of Freedom: A Primer on Modern Liberty* (Wilmington, Del.: ISI Books, 2000), pp. 51–59.

2. Quoted in Gilbert, p. 121.

3. *The Prince* (New York: Dover, 1992), p. 25. For subsequent quotations from this source, page numbers appear in my text in parentheses.

4. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (New York: Modern Library, 1937 [1776]), p. 862.

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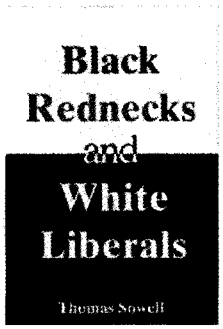
Book Reviews

Black Rednecks and White Liberals

by Thomas Sowell
Encounter Books • 2005 • 372 pages • $25.95

Reviewed by Richard M. Ebeling



In a just world Thomas Sowell would win the Nobel Prize in economics. Over several decades he has applied his exceptional skills as an economist to an array of interdisciplinary studies focusing on race, culture, and politics. And in doing so he has challenged and undermined many of the dominant ideological myths of our time.

In his new collection of essays, *Black Rednecks and White Liberals*, Sowell once again performs this task with great insight. The title essay, which opens the volume, shows that what passes for "black culture" in the United States, with its particular language, customs, behavioral characteristics, and attitudes toward work and leisure, is in fact a collection of traits adopted from earlier white southern culture.

Sowell traces this culture to several generations of mostly Scotsmen and northern Englishmen who migrated to many of the southern American colonies in the eighteenth century. The outstanding features of this redneck culture, or "cracker" culture as it was called in Great Britain at that time, included "an aversion to work, proneness to violence, neglect of education, sexual promiscuity, improvidence, drunkenness, lack of entrepreneurship, reckless searches for excitement, lively music and dance, and a style of religious oratory marked by rhetoric, unbridled emotions, and flamboyant imagery." It also included "touchy pride, vanity, and boastful self-dramatization."

Any commercial industriousness and innovation introduced in the southern states in the nineteenth and early part of the twentieth centuries, Sowell demonstrates, primarily came from businessmen, merchants, and educators who moved there from the northern and especially the New England states. The north generally had a different culture—of work, savings, personal responsibility, and forethought—that resulted in the southern United States lagging far behind much of the rest of the country—a contrast often highlighted by nineteenth-century European visitors.

The great tragedy for much of the black population, concentrated as it was in the southern states, was that it absorbed a great deal of this white southern redneck culture, and has retained it longer than the descendants of those Scottish and English immigrants. In a later chapter in the book, devoted to "Black Education: Achievements, Myths and Tragedies," Sowell explains that in the decades following the Civil War, black schools and colleges in the south were mostly manned by white administrators and teachers from New England who, with noticeable success, worked to instill "Yankee" virtues of hard work, discipline, education, and self-reliance.

In spite of racial prejudice and legal discrimination, especially in the southern states, by the middle decades of the twentieth century a growing number of black Americans were slowly but surely catching up with white Americans in terms of education, skills, and income. One of the great perversities of the second part of the twentieth century, Sowell shows, is that this advancement *decelerated* following the enactment of the civil-rights laws of the 1960s, with the accompanying affirmative action and emphasis on respecting the "diversity" of black culture. This has delayed the movement of many black Americans into the mainstream under the false belief that "black culture" is somehow distinct and unique, when in reality it is the residue of an earlier failed white culture that retarded the south for almost 200 years.

A related theme that Sowell discusses in a chapter on "The Real History of Slavery" is that the institution of human bondage is far older than the experience of black enslavement in colonial and then independent America. Indeed, slavery has burdened the human race during all of recorded history and everywhere around the globe. Its origins and practice have had nothing to do with race or racism. Ancient Greeks enslaved other Greeks; Romans enslaved other Europeans; Asians enslaved Asians; and Africans enslaved Africans, just as the Aztecs enslaved

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other native groups in what we now call Mexico and Central America. Among the most prominent slave traders and slave owners up to our own time have been Arabs, who enslaved Europeans, black Africans, and Asians. In fact, while officially banned, it is an open secret that such slavery still exists in a number of Muslim countries in Africa and the Middle East.

Equally ignored, Sowell reminds us, is that it was only in the West that slavery was challenged on philosophical and political grounds, and that antislavery efforts became a mass movement in the eighteenth and nineteenth centuries. Slavery was first ended in the European countries, and then Western pressure in the nineteenth and twentieth centuries brought about its demise in most of the rest of the world. But this fact has been downplayed because it does not fit into the politically correct fashions of our time. It is significant that in 1984, on the 150th anniversary of the ending of slavery in the British Empire, there was virtually no celebration of what was a historically profound turning point in bringing this terrible institution to a close around the world.

Sowell also turns his analytical eye to the question "Are Jews Generic?" Why have Jews been the victims of so much dislike and persecution throughout the centuries? He argues that the answer can be found in understanding the trades and professions they often specialized in because of legal discrimination and restrictions. Denied the right to own land and other real property in many European countries, and excluded from many politically privileged occupations, they become merchants, middlemen, and financiers. The middleman and the merchant, Sowell explains, have often been the least understood and most mistrusted members in any market economy. They seem to create profit for themselves "merely" by moving goods from one place to another without producing anything "real." Furthermore, as financiers they seem to earn interest at the expense of others while doing none of the "real work."

Sowell shows that the same suspicions, angers, and resentments often directed at Jews through the centuries have also been the fate of Chinese traders and merchants in Southeast Asia, or Indians and Pakistanis who have specialized in these activities in Africa. They, like many Jews, have been the victims of persecution, plunder, and physical harm more because of how they earn a living than who they are per se. It is economic ignorance and envy of success that have generated hatred against minorities. And by giving vent to these prejudices, majorities have invariably harmed their own economic well-being by driving out or killing those who performed essential market tasks that benefited all.

In a chapter on "Germans and History," Sowell challenges the conception that the Holocaust demonstrated something uniquely cruel and evil in the German people. Through the centuries, Germans were known for hard work, discipline, and skill in various specialized occupations and professions, and as respecters of the pursuit of knowledge and education. While anti-Semitism was an element of German society in the nineteenth and early twentieth centuries before Hitler came to power, in comparison to many eastern European nations, Germany was an example of tolerance and respect for civil liberties that attracted many Jewish families escaping from persecution in countries to the east.

To a dangerous extent, however, Germans fell victim to the ideologies of nationalism, socialism, and collectivism, which Hitler could play to in the years leading up to his gaining power in 1933. Sowell points out that while the Nazis were rabid in their hatred for Jews, through the 1930s Hitler had to carefully measure the degree to which he could violently persecute the German Jews without arousing the average German's resistance to disorder and random violence. Also, during those years the Nazis often found it difficult to win the German people's support for boycotting Jewish-owned businesses or breaking off social interactions with Jews. While the Nazi genocide of six million Jews was one of the great crimes of history, Sowell asks us to resist collectivist judgments and generalizations that detract from judging people as individuals.

In the concluding chapter on "History versus Vision," Sowell pleads the case for letting history be free from bias, ideological agenda, or political manipulation. While every history is a story about man through the interpretive eyes of the historian, Sowell says that if we are to truly learn from history it should not be reduced to mere propaganda and political fashion.

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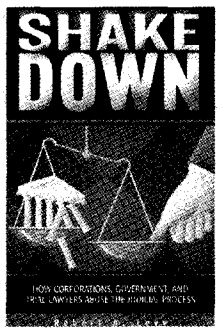
Shakedown: How Corporations, Government, and Trial Lawyers Abuse the Judicial Process

by Robert A. Levy
Cato Institute • 2004 • 224 pages • $22.95

Reviewed by George C. Leef



If you want money, one way of getting it is to produce and trade with others who desire what you have to sell. Sociologist Franz Oppenheimer famously called that the "economic means" of obtaining what one wants. Alas, many people prefer another way of getting money, namely, the use of force and/or threats to compel others to hand over some of theirs. Oppenheimer called that the "political means."

Criminals use the political means. So do government officials (over and above the regular pillage known as taxation), as well as many lawyers and business executives. In *Shakedown*, Cato Institute legal scholar Robert Levy demonstrates how those groups have figured out how to manipulate the legal system to achieve through the respectable, bloodless process of litigation results that would leave the greatest of criminals gasping in awe at the size of the take. When it comes to rip-offs, the most successful thieves are minor leaguers compared to today's shakedown experts.

The book has two parts. In the first, "Tort Law as Litigation Tyranny," Levy explains in detail how the tort bar in the United States has honed to perfection its weapons of legal extortion to extract great amounts of wealth from businesses and their shareholders. Trial lawyers used to play that game on a small scale, but in the 1980s they started to go for much larger jackpots, suing not just for millions, but hundreds of millions and even billions. The really big scores, Levy writes, are apt to occur when three tactics are combined under government auspices: parallel litigation (simultaneous lawsuits in several jurisdictions to stretch the defendant's resources to the breaking point); the use of private attorneys working for government on a contingency-fee basis; and the misuse of the judiciary as quasi-lawmakers.

That was the game plan for the assault on the tobacco industry. Up until the mid-1990s the industry had won every lawsuit brought against it on the grounds that smokers had known and voluntarily assumed the risks of their tobacco use. A cabal of state attorneys general then came up with a stupendous plan to break the tobacco companies—they would claim that their states needed to recoup the cost of Medicaid expenses incurred due to smoking, unleashing a swarm of private lawyers to sue, while getting their legislative allies to change the legal rules so as to wipe out the industry's ability to defend itself. The plan worked like a charm, with the tobacco industry eventually agreeing to the Master Settlement Agreement (MSA) obligating the firms to pay enormous sums to the states and their hired attorneys.

Levy points out many legal flaws in the case against the tobacco industry that the judges ignored. For example, there is the long-established legal doctrine of "unclean hands," which says that a plaintiff seeking damages must have taken any reasonable steps to minimize its damages. Levy pointedly asks, "[I]f the correctness of Florida's position was so apparent, why did it take 30 years after the Surgeon General's initial warnings for the state to press its claims? Why didn't Florida opt out of Medicaid, or ask the federal government to exclude smoking-related illnesses from its list of covered treatments?" But the deck was stacked against the tobacco defendants. No legal rules would be allowed to stand between the states and the oceans of money they were drooling over.

Is the MSA itself legal? Levy strongly argues that it isn't, calling it "the mother of all antitrust violations." In order to ensure the steady flow of tobacco money into government coffers, the MSA in effect creates a huge cartel that shields the big cigarette firms from competition. The author is no friend of antitrust, but demonstrates that if we take that law seriously we must regard the MSA as illegal. The state, however, turns a blind eye to its own attacks on competition.

Levy then examines the lawsuits against the firearms industry, lead paint, fatty foods, and alcohol. More of the same tactics, although so far the shakedown artists have not repeated their tobacco "success."

The second part of the book is Levy's attack on antitrust law, which he calls "corporate welfare for market losers." He begins by arguing that the most basic concept of antitrust law is erroneous. "The assumption

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of would-be regulators—that inefficiencies, especially in high-tech markets, can lock a company into a position from which it cannot be unseated—is a myth," Levy writes. Far from protecting consumers against monopolies, antitrust is really a means for both government and less-successful firms to squeeze "damages" out of market winners. The book's analysis of the antitrust case against Microsoft is utterly devastating.

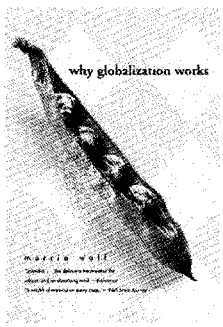
Shakedown is ultimately a brief in favor of freedom and the rule of law. If you favor those ideas, you'll love this book.

George Leef (georgeleef@aol.com) is the book review editor of The Freeman.

Why Globalization Works

by Martin Wolf
Yale University Press • 2004/2005 • 320 pages • $30.00 hardcover; $18.00 paperback

Reviewed by Martin Morse Wooster



Look at the foes of economic globalization and you'll find a curious coalition. Some are left-wingers who oppose globalization because they oppose capitalism. But others are right-wing protectionists who don't like foreign competition.

The strength of the anti-globalist coalition has waxed and waned over time, but there is still a large number of people who believe that globalization is a sinister force that must be stopped at any cost. In *Why Globalization Works*, Martin Wolf does a fine job in showing why free trade ensures that the world's economies continue to grow.

Wolf is the economics columnist for the *Financial Times*; he is the most libertarian voice in a newspaper well known for its stubborn hostility to classical liberalism. But in the 1970s, before he became a journalist, Wolf was an economist for the World Bank, where he saw firsthand how the bank's lending for failed Third World planning schemes left some of the world's poorest nations more destitute and debt-ridden than they were before the bank began to "help" them. This led Wolf to see that free trade is the best way to make sure that Third World countries are transformed from passive recipients of international aid to productive participants in the global economy.

Wolf is at his best when he refutes the facile claims of the foes of globalization. Among the charges he addresses:

• Corporations rule the world and force us to buy things we don't want. In her 2001 book, *No Logo*, Canadian anti-globalist Naomi Klein explains that her hostility towards capitalism began in fourth grade, where "my friends and I spent a lot of time checking each other's butts for logos. . . . [W]e were only eight years old but the reign of logo terror had begun."

"In the last century," Wolf notes, "millions of human beings knew the terror of police states, genocide, and government-engineered famines. But insists Klein, I and people like me have experienced terror too. We are not just the world's most pampered brats. We know terror too: 'logo terror.' " Wolf then shows that all the evidence suggests that consumers are less and less likely to buy products solely based on a brand name. And corporations, unlike governments, have no police or tax-collection agencies to confiscate people's incomes.

• Under globalization, the Third World gets all the manufacturing jobs. An average Chinese worker may earn $750 a year while a German earns $35,000 and an American $29,000. But Americans and Germans are far more productive than Chinese workers are. This productivity advantage ensures that skilled workers in American factories earn their high salaries—and explains why makers of complex products such as airplanes or drugs are unlikely to move production overseas.

• Globalization has increased inequality among nations. In fact, Wolf argues, the reverse is true. Freer markets in China and India have resulted in dramatic increases in income levels in those two nations in the past decade, ensuring that hundreds of millions of Chinese and Indians are leading better lives. Incomes in these two countries are nowhere near Western levels, but what matters more is that capitalism has made sure that the average worker is doing far better than he did under the draconian governments of Mao Zedong or Indira Gandhi.

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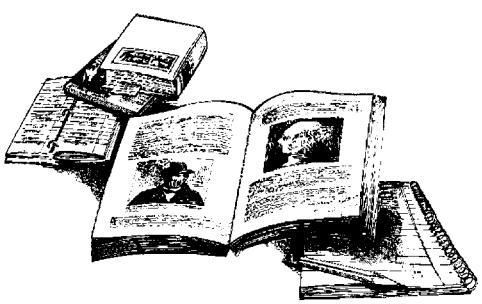
Moreover, international companies do not make investments in the Third World randomly. They invest in countries that believe in the rule of law—where private property is supported, contracts can be enforced by an independent judiciary, and an educated labor force is available. If far too many African nations are stagnating, it's not because of stinginess by multinational corporations, but because these countries are ruled by strongmen who plunder their countries and leave them as economic basket cases.

Wolf does not reflexively condemn all the anti-globalizers' arguments. In particular, he says that the charge that rich countries are hypocrites for asking poor countries to open their markets while preserving trade barriers is "more than justified." He notes that while global tariffs currently average 3 percent, agricultural tariffs are a more-punitive 13 percent—and most of these tariffs hurt the Third World. A Progressive Policy Institute study, for example, showed that in 2001 the United States charged Bangladesh $331 million in tariffs—about the same as France. The result: the tariffs punished Bangladeshi farmers trying to better their lives. Farm subsidies, antidumping measures, and environmental regulations are also frequently used by Americans, Europeans, and Japanese to keep foreign goods out. Those barriers, Wolf believes, should be greatly reduced or eliminated.

Martin Wolf is a sharp and lucid writer. Those interested in deepening their knowledge of the world's economy will find that *Why Globalization Works* is well worth the time and money.

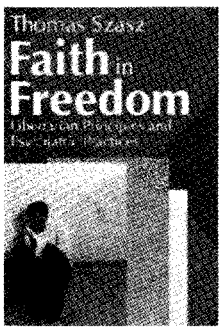
Martin Morse Wooster is a former editor at The Wilson Quarterly *and* The American Enterprise.



Faith in Freedom: Libertarian Principles and Psychiatric Practices

by Thomas Szasz
Transaction Publishers • 2004 • 264 pages • $34.95

Reviewed by Brian Doherty



Thomas Szasz, a *Freeman* columnist and a long-time libertarian hero, thinks that many other libertarian luminaries are slacking on the job. Szasz has fought his intellectual and legal battles for individual liberty—always paired with responsibility—in a particularly contentious arena: the struggle over rights for the so-called mentally ill. Szasz wonders why so many other prominent libertarians have failed to back him up on this or even written things that militate against his efforts.

He explores that question, and offers many stinging rebukes, in his latest book, *Faith in Freedom: Libertarian Principles and Psychiatric Practices*. Its focus makes this very much an "inside baseball" book for those interested in libertarianism's philosophical and intellectual history. It's not a good place to begin dipping into the intellectual richness of Szasz's huge *oeuvre*. Often he seems to assume a ready familiarity with his own heterodox thinking about the real nature of mental illness and how contemporary psychiatry deals with it. Szasz condemns as a pernicious myth the popular notion that the behaviors for which people are labeled "mentally ill" are caused by organic brain diseases that segregate those thus labeled from the liberal world of freedom and responsibility. Psychiatry, Szasz asserts, has built a citadel of coercion around that myth, one whose dual purposes are to incarcerate the innocent, through involuntary hospitalization, and exonerate the guilty, through the insanity defense.

Szasz presents his case for these ideas at length elsewhere—most vividly and convincingly, to this reader's judgment, in his 1987 work *Insanity: The Idea and Its Consequences*. But here he uses his ideas about mental illness mostly as a set point from which to condemn other liberal and libertarian thinkers for abandoning their frequent bravery and good sense when it comes to psychiatry. Chapters are devoted to how libertarian or liberal

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thinkers and institutions, including John Stuart Mill, the American Civil Liberties Union, Ayn Rand, Nathaniel Branden, Ludwig von Mises, F. A. Hayek, Murray Rothbard, and Robert Nozick, have dealt with—or not dealt with—these issues to which Szasz has dedicated his career. He finds them all wanting, either through failures of omission or commission.

"I believe that all Americans—especially libertarians—have a moral and intellectual duty to confront the conflict between liberty and psychiatry and articulate their position regarding the idea of mental illness and the psychiatric coercions and excuses it justifies," Szasz insists. Only the Libertarian Party among contemporary libertarian institutions, he says, fully applies libertarian ideas of self-ownership and the rule of law to the world of psychiatry.

I think Szasz is being somewhat unfair through much of this book. He doesn't pay proper heed to the economic principles of comparative advantage and opportunity cost. It ought not necessarily be the task of every advocate of libertarianism to man the barricades on every specific application of libertarian ideas to the real world, despite Szasz's lament that "many libertarians . . . dwell on the importance of free markets, except in psychiatry, and tirelessly recite the mantra that 'people should be free to do whatever they want in life as long as their conduct is peaceful,' but do not mention mental health laws, much less advocate their repeal."

Given the idea, going back within the libertarian tradition at least to Mill, that liberty applies fully only to adults competent to handle their own affairs responsibly, it takes a particularly fierce independence of mind, combined with careful study of his work, to endorse Szasz's application of classical-liberal principles to the so-called insane. To someone who has aimed his intellectual efforts in other directions—who has not, as Szasz has, studied the world of psychiatry extensively and from the inside—it is a perfectly excusable error for an "educated layman" libertarian to presume, as all the experts insist, that the so-called insane are not, any more than children or Alzheimer's victims would be, competent individuals deserving all the rights and privileges of such, but are in fact people who require paternalistic care. (Szasz himself has criticized Rand for not recognizing the existence of innocent dependency in the human world, as witness her lack of children or the extremely aged in her work.)

When his complaint is that the writers in question don't mention the psychiatric-control issues that Szasz has built his career on, not that they have openly advocated the incarceration of the "mentally ill," his barbs seem especially ill-aimed.

Szasz is a brilliant and brave thinker, and I can understand his frustration that he has slashed and walked paths that few have been prepared to join him on. In this case, that frustration has led to a book not quite up to his highest standards in all its parts, although it still contains valuable chunks of his brilliant and passionate defenses of liberty and responsibility.

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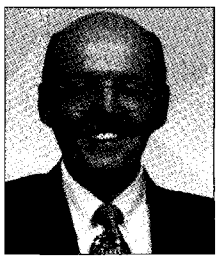

Australian Labor-Relations Sell-Out

BY CHARLES W. BAIRD

In mid-March, at the behest of the H.R. Nicholls Society, I traveled to several Australian cities speaking on the subject of the American labor market and the lessons that it might have for labor-law reform in Australia. Along the way I discovered that Australian labor-relations regulations are much more irrational, contradictory, and oppressive even than our own National Labor Relations Act.

Since early last century relations between employers and workers in Australian workplaces have been subjected to "awards" by a quasi-judicial body, the Australian Industrial Relations Commission (AIRC). Collective bargaining as we know it in the United States did not exist at least until the late 1980s. The AIRC's awards, not agreements, determined the terms and conditions of employment. Employees and employers were regarded as insufficiently knowledgeable to come to sensible agreements, even collective agreements, at the enterprise level. Employees were assumed to have far less bargaining power than employers, so any agreements between them had to harm workers. Only the anointed wise men of the AIRC could know what was proper and just.

While there were some baby-step reforms in the late 1980s and the 1990s, the awards system still dominates industrial relations in Australia. A union or a group of unions representing workers in an industry or sector of the economy presents its demands to the AIRC, and an employers' organization representing employers in that industry or sector takes the other side of the "dispute." The AIRC grants a detailed, prescriptive award in the dispute that, by force of law, is imposed as a minimum standard throughout the industry or sector. The unions and employers' organizations are assumed, respectively, to represent all workers and all employers in the industry or sector. Before 1996 individual workers and employers were not permitted to opt out of either the representation or the awards.

Opting out is still difficult. Because the AIRC accepts the hoary bargaining-power disadvantage myth as an article of faith, unions exert much greater influence on awards than employer organizations, which often feel impelled to make concessions. This tripartite arrangement, not dissimilar to that of fascist Italy, is known in Australia as the "industrial relations club."

Awards are typically hundreds of pages long and they prescribe in infinite detail what can and cannot happen in covered industries and sectors. In addition to wages and salaries, all rules for work, breaks, leaves, promotions, demotions, transfers, layoffs, terminations, holidays, and even jury duty are prescribed. Once an award is made, a union has a right of entry into workplaces, even where none of its members are employed, and even in union-free workplaces, to ensure the award is being applied. Once the AIRC imposes an award it may adjust other awards in other industries and sectors to preserve appropriate "wage justice and fair relativity." Before the late 1980s the high prices for labor that emerged from this system were supported by tariffs and other barriers to competition in product and services markets. Except in the underground economy, market considerations were irrelevant.

In the 1980s, because of increasing globalization of commerce and competition, it became clearer that this *dirigiste* arrangement harmed almost all consumers, employees, and employers, not to mention the unemployed and the underemployed. Like their neighbors in New Zealand, Australians implemented liberalizing reforms in financial, product, and services markets, but only very marginal ones in labor markets. The myth of labor's bargaining-power disadvantage held even the

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reformers in its thrall. New Zealanders cast the myth aside in 1991 when they enacted the Employment Contracts Act (ECA), which almost completely liberalized their labor markets.

Australia legalized union-based collective bargaining at the enterprise level in 1988 and union-free collective bargaining at the enterprise level in 1993. Individual agreements between an employer and an employee were still banned, and collective agreements were subject to a "no disadvantage test" with respect to comparable awards. That is, the agreements had, in the eyes of the AIRC, to provide compensation and other employment conditions that overall made workers at least as well off as workers covered by traditional comparable awards.

Attempt at Reform

In 1996 a coalition of the Liberal and National Parties took control of the lower house of the Australian Parliament from the Labor Party. John Howard, a Liberal MP who had promised to move toward greater liberalization of labor markets, became prime minister. That year Parliament enacted the Workplace Relations Act (WRA), which is still the law today. The principal stated intention of the WRA is to move Australia away from centralized awards toward decentralized enterprise-level agreements. It also permits individual bargaining for individual employment contracts called Australian Workplace Agreements (AWA), although the Office of Employment Advocate (OEA) is required to check whether they pass the no-disadvantage test.

By any reasonable measure the WRA has not accomplished its principal goal. While there are now many collective and individual decentralized workplace agreements in place, they all must comply with the centralized AIRC awards. The AIRC, not Parliament, sets legal minimum wages in Australia, and it does not impose one legal minimum wage at a time as Congress does in the United States. It imposes literally thousands of them in its awards. The AIRC is made up almost exclusively of people who have a vested interest in preserving the old union-dominated awards system. They take advantage of every actual ambiguity, and invent ambiguities that do not exist, in the WRA to try to preserve the old *dirigiste* system.

The fecklessness of the WRA is largely due to the fact that in 1996 the Howard government controlled only the lower house of Parliament. The Labor Party controlled the Senate. While the lower house elects the prime minister, both houses have to agree on legislation before it is enacted, so the liberal reformers were forced to compromise with defenders of the status quo. The result was a law of over 500 pages of incredible complexity consisting of confusing, contradictory, and often ambiguous language that makes it possible for the members of the AIRC to interpret it according to their own predilections.

The 2004 election gave Howard a fourth term as prime minister; the coalition won continued control of the lower house as well as eventual control of the Senate. Australian liberals thought that it might at last be possible to enact substantial labor-market liberalizations, perhaps even going so far as New Zealand did in 1991. Alas, those hopes have been dashed.

In May 2005 the Howard government announced an outline of measures it would try to enact after the change of control of the Senate in July 2005. The no-disadvantage test would be dropped. The AIRC would lose its powers to set minimum wage rates and to approve enterprise collective agreements. Its role would be reduced to resolving industrial disputes and simplifying existing awards. However, a new bureaucracy, the Australian Fair Pay Commission (AFPC), would set minimum wage rates no worse than existing awards, which would be new awards in everything but name. The OEA would approve enterprise collective agreements and continue to approve individual AWAs. The AFPC and OEA would be instructed to take economic factors into consideration when making their decisions. (Imagine that!) A special task force would be charged with reviewing existing awards. Hopefully, to the extent there would be new decision-makers, they would be less wed than the AIRC to the old regime.

Compared to New Zealand's ECA, the Howard government's proposals look more like a sellout to the industrial-relations club than meaningful labor-relations reform. A golden opportunity has been lost for want of moral clarity and political courage.

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